

Ram Das and ors. Vs. Emperor

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Court : Allahabad

Decided On : Apr-15-1918

Reported in : AIR1918All124; 46Ind.Cas.302

Judge : P.C. Banerji, J.

Appellant : Ram Das and ors.

Respondent : Emperor

Judgement :

P.C. Banerji, J.

1. The three accused in this case have been convicted under Section 64(c) of the U.P. Excise Act, IV of 1910. The first two accused are the holders of a license for the sale of liquor. The third accused Kallu is their salesman. One of the conditions of the license was that an account of sales made shall be kept in a prescribed form. The charge against the accused was that they had not kept correct accounts and that they had thus committed a breach of condition 9 of the license Section 64 provides that whoever, being the holder of a license or being in the employment of such holder and acting on his behalf, wilfully does or omits to do anything in breach of any of the conditions of the license, shall be punished for each such offence with fine. As regards the first two accused, they would be guilty under the section if they wilfully did or omitted to do anything in breach of any of the conditions of their license. The use of the word 'wilfully' clearly shows that it must

be shown that they themselves allowed the breach to be committed by their servant or were cognizant of what their servant was doing. The learned Sessions Judge, therefore, was, in my opinion, right in the view that these men could not be legally convicted under the section. The Magistrate who convicted them referred to the case of Babu Lal v. Emperor 14 Ind. Cas. 666 : 34 A. 319 : 9 A.L.J. 288 : 13 Cr. L.T. 282. That was a case under the Opium Act, the provisions of which were different from those of the Act in question in the present case. Reference was made in that judgment to the unreported case of Queen-Empress v. Ram Kishen Cr. Ref. No. 69 of 1890 decided on the 26th of February 1890. That was a case under Section 42 of Act XXII of 1881, the provisions of which were different from those of the present Act. The use of the word 'wilfully' seems to me clearly to show that in the case of the accused it must be proved that they had intention or knowledge. As for Kallu who is said to have altered a page of the register, it seems that the original page, according to the finding of the Court below, did not contain an incorrect entry. I have considerable hesitation in agreeing with the learned Sessions Judge that the word 'accounts' does not mean correct and proper accounts but even on that construction it can hardly be held, in view of the lower Court's finding, that the accounts were not correctly kept.

2. Under these circumstances the conviction of the three accused was not justified. I accordingly set aside the conviction and sentence and direct that the fine, if paid be refunded.