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Chungur Vs. the State

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Court : Allahabad

Decided On : Dec-17-1951

Reported in : AIR1952All533

Judge : Kidwai, J.

Acts : Uttar Pradesh Excise Act, 1910 - Sections 3(4), 10, 50 and 60; Uttar Pradesh Excise Rules - Rule 278

Appeal No. : Criminal Revn. No. 153 of 1951

Appellant : Chungur

Respondent : The State

Advocate for Def. : Hammad Farooqi, Addl. Govt. Adv.

Advocate for Pet/Ap. : Babu Ram Gir, Adv.

Judgement :
ORDER

Kidwai, J.

1. This is an application in revision filed by Changur who ha3 been convicted under Section 60, Clause (a) of Excise Act for being in possession of two seers of contraband Nepali Ganja. He was sentenced to undergo rigorous imprisonment for

three months. He appealed but the learned Sessions Judge of Gonda upheld the conviction and the sentence. The applicant has come up in revision. It is contended on his behalf that his conviction is bad for the following reasons: (1) that he was arrested not by an Excise Officer but by the villagers belonging to the village defence party and consequently the arrest was illegal; (2) that no report of the Chemical Examiner was produced to show that the Ganja recovered was Nepali contraband Ganja; and (3) that the prosecution was initiated by a Sub-Inspector of Police and not by an Excise Officer and consequently the applicant could not be convicted under Section 60 (a), Excise Act.

2. It appears that on the night between the 3rd and 4th September 1949, at about midnight the village defence party of village Magoiya saw 8 or 10 men with bundles on their heads. They along with the village Chaukidar chased these persons and caught six of them. The bundles on being opened at the house of Fateh Bahadur Mukhis nearby were found to contain Ganja. The persons arrested were thereupon taken to police station Chapia where the Sub-Inspector took possession of the Ganja and sealed it. Later this Ganja was sent to the Excise Inspector who examined it and found it to be contraband Nepali Ganja. The six persons were prosecuted and they have been convicted and among those persons was Changur who has come up in revision.

3. A reference to Emperor v. Chunni, 6 Luck. 646 shows that as early as 13th July 1910, the Government issued a notification authorising, among others all police officers including the Provincial Chaukidari force, town, village androad chaukidars, to perform the acts and duties mentioned in Section 50. Excise Act. This notification was issued under Section 50 by virtue of the powers conferred upon the Government by Section 10 of the Act and under Section 3 Clause (4), Excise Act the Chaukidar thereupon became an Excise Officer and an arrest by him under the provisions of Section 60 was a valid arrest in pursuance of the Excise Act. No objection can, therefore, be taken to the arrest.

4. With regard to the third point also this notification meets the objection because all police officers are Excise Officers within the meaning' of Section 60 by reason of the noti6oation.

5. My attention was drawn to the decision of my learned brother Raghubar Dayal J., State v. Budruddin, : AIR1950 All436 , in which it was held that in a case reported by a Station Officer and not by an Excise Officer a Magistrate cannot legally convict under Section 60 (a), Excise Act. It appears that the notification to which reference is made in Emperor v. Chunni, 6 Luck. 646 was not brought to the notice of my learned brother. There is another case reported Azim Ullah v. State, 1930 ALL. L. J. 444 in which my brother Desai J. held that a police officer was an Excise officer within the meaning of the Excise Act. In view of the notification to which the reference was made it must be held that prosecution was properly launched and there is no illegality in the conviction on that ground.

6. With regard to the second point a reference to Rule 278 framed under the Excise Act shows that it is not essential that every intoxicant produced in a case should be analysed by the Chemical Examiner. It is only when the Excise Inspector or other officer prosecuting considers it necessary, that he is to move the Magistrate to send the intoxicant to the Chemical Examiner. In the present case, there is the statement of the Excise Inspector that the Ganja was contraband Nepali Ganja and was different from the Ganja produced in Government godowns. The statement of this Excise Inspector also proves that the parcel containing the Ganja was brought to him in a sealed cover by police constable Bhikham Singh and the statement of the other prosecution witnesses shows that as soon as the Ganja was taken to the police station it was sealed. In these circumstances there is no defect in the proof of the fact that this is contraband Ganja.

7. The applicant was directed on 11th July 1951, to be released on bail. By that time he had practically served out the whole of the sentence. In these circumstances I do not think it desirable to send him again to jail. I accordingly reduce the sentence to the period already undergone.

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