

**Emperor Vs. Bachcha**

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**Court :** Allahabad

**Decided On :** Apr-18-1934

**Reported in :** AIR1934All873; 153Ind.Cas.472

**Appellant :** Emperor

**Respondent :** Bachcha

**Judgement :**

**Collister, J.**

1. This is an appeal on behalf of the Local Government against the acquittal of one Bachcha on a charge under Section 14, Dangerous Drugs Act, 2 of 1930. The case for the prosecution was that the Excise Inspector, Munshi Abdul Ghaffar Khan, received certain information on 4th November 1933, in consequence of which he took some police officials and a resident of Patehpur, named Mohammad Zaki, with him to mile 23 on the road which goes from Fatehpur to Cawnpore. The accused came along with certain other persons on an ekka and the Excise Inspector and the police officers stopped the ekka and searched it and also searched the person of the accused. On the seat of the ekka they found a packet containing a certain substance and on the person of the accused they found a match-box containing a similar substance. They took possession of the packet and the match-box and these were subsequently sent to the Chemical Examiner, whose report shows that the substance in the packet and also in the match-box

contained more than 3 percent of cocaine admixed with novocaine. The accused admitted that the packet was found in the ekka, but he denied that he had any concern with it. He denied that the match-box was recovered from his possession. He pleaded enmity with the Excise Inspector, but has made no attempt to prove it. He examined the ekka driver and two other witnesses in support of his statement that nothing was found on his person. The trial Court convicted Bachcha under Section 14 of the Act, and sentenced him to four months' rigorous imprisonment. The Sessions Judge of Fatehpur agreed with the trial Court on facts, but has acquitted the accused on the ground that the Chemical Examiner had not been called and examined as a witness to depose to the contents of the packet and matchbox, The Sessions Judge considered himself bound by the remarks of Young, J., in a case which recently came before this Court : Happu v. Emperor 1933 All. 837. The case in question was a case of murder by arsenic : and we agree that cases may arise particularly in a matter of arsenic poisoning in which it may be necessary in the interests of justice that the Chemical Examiner be called and examined as a witness and be subjected to cross-examination. But we do not; accept the proposition that the Chemical Examiner must be called in all cases in which a Chemical Analysis has been made and in which the result of such analysis is a determining factor in the case. Under Section 510, Criminal P.C., the report of the Chemical Examiner is admissible in evidence, and in this case neither the accused nor his counsel objected to the admission of the Chemical Examiner's report, and they did not request that the Chemical Examiner be sent for and put into the witness-box. Nor was it pleaded that the substance in the packet and in the match-box was not in fact cocaine. In our opinion the report of the Chemical Examiner in the present case establishes the fact that the substance which was taken possession of by the Excise Inspector contains more than 3 per cent of cocaine admixed with novocaine.

2. It is argued before us by counsel for the accused that the Excise Inspector violated the provisions of Sections 165 and 103, Criminal P.C., read with Section 25, Dangerous Drugs Act. Section 165, Criminal P.C., lays down that the searching officer should first record in writing the grounds of his belief (as regards the suspected article) and should specify in such writing as far as possible the thing for which the search is to be made. The Excise Inspector states that he

received information that cocaine was being smuggled from Cawnpore and he says that Ex. D is his memorandum and that he recorded in it the information which he had received. Ex. A. reads as follows:

Information is received this moment that BaChcha, son of Madar Baksh of Village Oho to Bazar, Bindki, has got illicit liquor and apparatus in his house, and as there is no time to secure a warrant without affording an opportunity to dispose of it. I am therefore going to search his person forthwith.

3. It will be seen that there is no mention in that memorandum of the smuggling of cocaine from Cawnpore and it is clearly at variance with what the Excise Inspector has stated in Court. But not a single question was put to the Excise Inspector in cross-examination to obtain from him an explanation of this discrepancy. It was clearly the duty of counsel for the defence to put this to the Excise Inspector and ask him if he was able to explain it. It is possible that he might have been in a position to do so. The words 'I am therefore going to search his person' show that the Excise Inspector had grounds for making a personal search apart from a house search. In any case the alleged irregularity in procedure would not necessarily vitiate the conviction.

4. Section 103, Criminal P.C., provides that before making a search, the officer about to make it shall call two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search. The search in the present case was made on the metalled road and nowhere near a town and so it was obviously impossible to obtain as witnesses any persons from the immediate vicinity. What the Excise Inspector did was to take a physician named, Mohammad Zaki, from Fatehpur. We think that in the light of Section 103 he ought to have taken some other person in addition to Mohammad Zaki; but an irregularity of this sort can be no bar to the conviction if we are satisfied that the cocaine was in fact found in the possession of the accused. The accused has entirely failed to prove any enmity between himself and the Excise Inspector and nothing whatever has been shown against the credibility of Mohammad Zaki. His evidence and the evidence of the Excise Inspector and Head Constable Kamta Prasad satisfy us that the packet and the matchbox containing cocaine were

recovered in the manner alleged and the accused is therefore liable to conviction.

5. The result of our findings is that we allow this appeal and set aside the order of acquittal. We convict Bachcha under Section 14, Dangerous Drugs Act, and we sentence him to be rigorously imprisoned for four months. If Bachcha is on bail he must surrender to his bail and serve out his sentence.

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