

Gur Prasad Vs. Emperor

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Court : Allahabad

Decided On : Feb-14-1933

Reported in : AIR1933All370

Appellant : Gur Prasad

Respondent : Emperor

Judgement :

ORDER

Kendall, J.

1. This is an application for the revision of an order of the Sessions Judge of Gorakhpur, upholding the Magistrate's order convicting the applicant of an offence under Section 64(c), Excise Act, 1910, but reducing the fine from Rs. 51 to Rs. 10. The application has been made on the ground that the conviction is wrong in law, and it has also been pointed out by Mr. Ramnama Prasad for the applicant that although the fine is a trivial one the fact of the applicant's having been found guilty of an offence under the Act will be a serious matter to him, as he will not only be disqualified from holding a licence again but must lose the security of Rs. 550 supplied by him to the Excise Department. He has been convicted under Clause (c), Section 64 of the Act, viz., of willfully doing or omitting to do something in breach of one of the conditions of the licence. When his shop was inspected it was found that he had not in stock certain of the packets of drugs which are detailed in

condition 7 of the licence, and the Courts have found that he committed a breach of conditions 7 to 9. I have examined these conditions with some care, and have heard arguments on both sides. Condition 7 shows the different sizes of packets of ganja, charas and bhang which the licensee is authorized to sell to the public. They range in weight from 1/48th of a tola to two chataks, and the prices are fixed in the same condition for each denomination of each description of drug. It is not suggested that the applicant did anything in contravention of condition 7 or condition 8. Condition 9 provides that the licensee must personally supervise the weighing of each kind of intoxicating hemp drug corresponding with the sizes prescribed in condition 7 it is not suggested that he did not do this and further that he must have a sufficient number of such portions wrapped, in paper and sealed in his presence and kept ready for sale to the public at the prices authorized provided that the licensee is not required to keep in stock any of the three drugs for which there is no demand. The case against the applicant was that he did not have a sufficient number of some of the denominations detailed in condition 7, and that he had none at all of others. No attempt has been made to show what a 'sufficient number' of each denomination would be, and there was clearly no evidence to prove that he had not a sufficient number of any particular denomination. What was proved was that he had none at all of some of these denominations, and it was for this reason that, he was found guilty of an offence and fined. The matter is not without importance because although the offence, if any, is a very technical one, it is, one that might almost certainly be brought home to a number of licence-holders with somewhat serious consequences to them.

2. Dr. Waliullah has argued that conditions 7 to 9 compel every licence-holder to keep in stock a 'sufficient, number' of each of the denominations, named in condition 7. It is true that, the proviso shows that if there is no demand for a particular drug it is not necessary for the licence-holder to keep that drug in stock, but it is argued that this proviso must not be interpreted to mean that the 'licence-holder is not required to keep in stock any particular sized packet of a drug, that is in the demand if he finds that there is no demand for that particular sized packet. But it seems to me clear that on the assumption that each of these three drugs was in demand, the licensee must be held to have carried out not only the spirit but the letter of the conditions on which he held his licence if he had in stock a

sufficient number of packets to satisfy any demand that might be made from him for that particular drug. For instance, he might not have anyone tola or half tola packets of bhang, but if he had a sufficient number of quarter tola packets to meet the demand the public would be satisfied, the department would not suffer and the condition of the licence would not, in my opinion, have been outraged in any way. It may be that the failure to keep in stock packets of some particular size would result in a breach of the conditions of the licence, but it would have to be shown that in so doing he had failed to meet a demand that existed. Supposing for instance that there was a demand for very small packets of charas such as 1/48th of a tola, and he had none in stock he would probably not be able to supply the deficiency from the larger packets and thus might be held to have committed a breach of the licence. I cannot however agree with the Courts below that the mere fact that he did not stock the packets of every size which he was authorized to sell proves that he had broken a condition of the licence and became liable to a fine. I therefore allow the revision and set aside the orders of the Courts below convicting the applicant of an offence, and I direct that he be acquitted and the fine, if paid, be refunded.

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