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Tittar and anr. Vs. State

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Court : Allahabad

Decided On : Oct-25-1952

Reported in : AIR1953All506

Judge : Kaul, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 103 and 439

Appeal No. : Criminal Revn. Appln. No. 39 of 1952

Appellant : Tittar and anr.

Respondent : State

Advocate for Def. : B.L. Kaul, Deputy Govt. Adv.

Advocate for Pet/Ap. : H.D. Srivastava and ;Babu Ram Gir, Advs.

Disposition : Application allowed

Judgement :
ORDER

Kaul, J.

1. Tittar Khatik and his son, Bhajan were convicted under Section 60 (b), U. P. Excise Act, and sentenced to six months' rigorous imprisonment. They preferred an appeal, which was unsuccessful. They have now come up to this Court in

revision. The material facts are as follows :

2. A house in village Sahibganj said to belong to Tittar was raided on 20-4-1951, by Excise Inspector, Ram Pratap Singh. The search witnesses who accompanied him were head constable Lalta Singh P. W. 1, Amiruddin an octroi clerk P. W. 2 and Rafiq, an ekkawallah P. W. 5. According to the prosecution version, Tittar and Bhajan were found distilling liquor in the house. A Charbua, a bhapka, a pipe, an urnai, handsome distilled liquor and a quantity of mahua wash were saia to have been recovered from their possession.

3. The accused pleaded that there was enmity between them and the Excise Inspector, Ram Gopal Singh (Ram Gopal Singh was on leave and one of his subordinates, Ram Pratap was apparently officiating for him and carried out this raid). That practically all the members of his family had been challaned under the Excise Act by Ram Gopal Singh on 15-11-1950 and it was the ill-feeling that existed between them and Ram Gopal Singh which was responsible for this false case being concocted against them. According to the accused they attended the Court of a Magistrate in Gonda on 20-4-1951 and returned to their home at about 5-30 p. m.. It was while returning home that they were stopped by the Excise Inspector who was accompanied by a constable and two or three other persons and were challaned. This defence was disbelieved by both the Courts below and the petitioners were convicted and sentenced accordingly.

4. Mr. Hargovind Dayal Srivastava, learned counsel for the petitioners was alive to the fact that this was a revision application and ordinarily findings of fact could not be challenged in this Court. He, however, invited my attention to the failure of Ram Pratap who effected this search to observe the provisions of Section 103, Cr. P. C Under that section before making a search under Chap. VII it is incumbent on the officer or the persons about to make the search to call upon two or more respectable inhabitants of the locality in which the place to be searched is situated to attend and witness the search and may issue an order in writing to them or any of them so to do. It was contended by the petitioners counsel that in this case no regard was paid to these provisions of the law. On the other hand the Excise Inspector took with him a head constable, Lalta Singh, from the police outpost

Bargaon and picked up the octroi clerk, Amiruddin from the octroi barrier and Rafiq an ekkawallah who happened to be at the octroi post. It was stated by one of the prosecution witnesses that an attempt was made to call the local inhabitants to witness the search but it was unsuccessful. This does not appear to be correct as we find from the evidence of head constable Lalta Singh that the Excise Inspector asked him to accompany him while coming to effect the search. It is in evidence that Sahibganj is a village where there are a number of houses and some mahajans also live there. There is nothing but the word, of mouth of one of the prosecution witnesses that an attempt was made to call local inhabitants to witness the search and was unsuccessful. It is open to the Excise Inspector to issue an order in writing to any of the inhabitants of the locality and to ask him to witness the search. This was not done. I am not oblivious of the fact that in carrying out such raids, care is to be taken to keep the whole thing secret otherwise the raids are bound to be unsuccessful because if the culprits came to know that an officer of the Excise Department was likely to visit their house, they are bound to do away with the incriminating articles before he arrives. The fact, however remains that in this case the Excise Inspector brought the search witnesses with him when he came to Sahibganj. They were persons who cannot be said to be inhabitants of the locality. It is, therefore, clear that there was a total disregard of the provisions of Section 103, Cr. P. C.

5. It was contended, however, by the learned counsel for the State that if it was proved from reliable evidence that the petitioners were distilling liquor the fact that the search was irregular would not affect their guilt. This may be so but the irregularity in effecting the search opens the door for the argument that the Court below not having approached the evidence from this point of view, it should be reviewed by this Court. I have, therefore, to consider if the prosecution evidence establishes the applicants' guilt without reasonable doubt.

6-8. (His Lordship then considered the facts and the evidence in the case and continued as follows :) Having regard to the irregularities in the making of the search, the improbability on the evidence of Tittar and Bhajan having started the process of distilling the liquor and the statement of P. W. 5 Rafiq I am not satisfied that the case is free from reasonable doubt.

9. I allow the revision application, set aside the petitioners' conviction and the sentences passed upon them and acquit them. The applicants are on bail. They need not surrender thereto.

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