

Ashfaq Vs. Emperor

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Court : Allahabad

Decided On : Jun-16-1936

Reported in : AIR1936All707; 165Ind.Cas.25

Appellant : Ashfaq

Respondent : Emperor

Judgement :

ORDER

Allsop, J.

1. The applicant Ashfaq has been sentenced to rigorous imprisonment for a period of two years and a fine of Rs. 250 under Section 14, Dangerous Drugs Act, and to rigorous imprisonment for a period of three months under Section 60, Excise Act, and he has also been directed to execute a bond for a period of two years. The allegation against him was that his house was searched and he was in possession of cocaine and charas contrary to law. The Magistrate found him guilty and he appealed to the Sessions Judge who dismissed his appeal. There is no reason why questions of fact should be re-agitated in this Court. Some points of law have been taken in the grounds of revision. One is that the search was not properly conducted because the two search witnesses were not respectable within the meaning of the Act. One of them, Bashir, is a Chaudhari of the Ekka-walas, and Ayub is a hawker. I do not think that respectability connotes any particular status

or wealth or anything of that kind. Any person is entitled to claim respectability provided he is not disreputable in any way, that is, if he is not a thief or a criminal of some kind or a person perhaps of grossly immoral habits. It is also said that Ayub has given evidence before in police prosecutions. I do not think that being a prosecution witness is sufficient to deprive one of one's title to respectability. Then another argument is that the applicant has been prejudiced by the failure of the Court to allow the cross-examination of a prosecution witness named Ismail. It appears that this man was the applicant's servant and he gave evidence that he had been employed to sell drugs. He was cross-examined when he made his statement but did not appear for cross-examination after the charge was framed. The learned Judge in appeal has said that he has not relied upon his evidence in these circumstances. I do not see that he could do any more in the matter if Ismail did not choose to appear and if the applicant did not press the Court to have a warrant issued for his arrest so that he might be cross-examined. There is no other ground which could suitably be raised in this Court. There is no force in this application and I dismiss it. The sentence is perhaps severe, but anybody who trades in cocaine deserves to be treated with severity.

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