

Janki Das Vs. Emperor

Janki Das Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/471218

Court : Allahabad

Decided On : Dec-09-1916

Reported in : AIR1917All105(2); 39Ind.Cas.336

Judge : Tudball, J.

Appellant : Janki Das

Respondent : Emperor

Judgement :

Tudball, J.

1. The applicant Janki Das has been convicted of an offence under Section 60 of the Excise Act, IV of 1910. The facts found appear to be as follows, though they are by no means clearly set out in the judgment of the Court below; in fact that judgment is not a good one. It ought to have clearly stated the actual facts on which the accused had been convicted. However, so far as can be ascertained from the judgment of the Magistrate and from the judgment of the Sessions Judge on revision, they appear to be as follows: Kanhaiya Lal is the licensee of a certain liquor shop. On a certain evening the Excise Officer paid a surprise visit to the shop. He found a man sitting on what is called the gaddi, apparently selling liquor to the public. The accused Janki Das was handing something, probably liquor, to this person on the gaddi. Who that person was on the gaddi it is not clear, though it appears from the affidavit filed in the Court below that he was one Shankar Das,

a servant of Kanhaiya Lal, authorised by the Collector to carry on the sales at the shop. On these facts Janki Das has been convicted of an offence of selling liquor without a license. It seems to me impossible from the facts to hold that Janki Das committed any offence whatsoever. Shankar Das was the person authorised by the Collector to sell liquor at the shop and he was employed for that purpose by Kanhaiya Lal. The accused, another assistant at the shop, who was not authorised to sell, was apparently handing liquor to Shankar Das who was selling it to the public. If this man is guilty of an offence, then every person who performs any duty whatsoever in that shop, excepting the actual handing over of the liquor to the public, commits an offence every time he assists in the bottling of the liquor or the cleaning of the utensils, or in any other way assisting in the shop. It is surely, not the meaning of the rules or of the law that the doing of such acts as these should be considered an offence. Rule 86(6) of the Excise Manual lays down that the vendor shall not allow any person to conduct sales in his premises, unless such person has been previously approved by the Collector and his name endorsed on the license. The sale in the present case has been conducted by Shankar Das, and the mere handing up of a bottle of liquor by an assistant to Shankar Das is not covered by this rule. I allow the application and set aside the conviction and sentence. The fine, if paid, will be refunded.