Sunder Vs. Emperor

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Court : Allahabad

Decided On : Jan-10-1936

Reported in : 164Ind.Cas.659

Judge : Niamat Ullah, J.

Appellant : Sunder

Respondent : Emperor

Judgement :
ORDER

Niamat Ullah, J.

1. This is a reference by the learned Sessions Judge of Aligarh in a case under the U.P. Excise Act. One Sunder was originally prosecuted for being in possession of illicit liquor. The report of the Chemical Examiner, on which depended the issue whether the liquor possessed by hint was illicit, was inconclusive, and the case had to be dropped in respect of that offence. The Sub-Inspector, however moved the Magistrate, before whom the case was pending, that the accused be convicted of the offence of being in possession of liquor in excess of the quantity authorised by law (which includes provisions of the Act, the rules and the terms of the license). The Magistrate proceeded to try the accused for the offence of being in possession of liquor in excess of the authorised quantity and eventually convicted him, awarding a sentence of fine of Rs. 5.

2. An application for revision was filed before the learned Sessions Judge, who has made the present reference. The learned Judge has expressed the opinion that the trying Magistrate had no jurisdiction in view of the provisions of Section 70, Excise Act, which lays down that no Magistrate shall take cognizance of an offence punishable, inter alia, under Section 70 (a), except on his own knowledge or suspicion or on the complaint or report of an Excise Officer. It is pointed out that the Magistrate did not take cognizance of the offence on his own knowledge or suspicion and that there was no complaint or report of an 'Excise Officer' before the Magistrate. It is clear that the learned Sessions Judge has taken the expression 'Excise Officer' in the ordinary sense, implying an officer of the Excise Department. The trying Magistrate has furnished an explanation which refers to Emperor v. Chattar Singh 21 ALJ 922 : 82 Ind. Cas. 705 : 10 O & ALR 293 : 46 A 158 : AIR 1924 All 267 : 25 Cr.LJ 1345 : LR 5 A 40 Cr, which is an authority for the proposition that an Excise Officer is a person to whom any of the powers referred to in Section 10 has been given. A reference is made to a Government Notification tinder which certain powers, referred to in Section 10, have been conferred upon all Police Sub-Inspectors. The Magistrate, therefore, argues on the authority of the case already referred to, that the Sub-Inspector who moved him to convict the accused of the offence of being in possession of liquor in excess of the authorised quantity, was an Excise Officer within the meaning of Section 70 of the Excise Act. This view seems to be correct and in accord with the provisions of the Excise Act, as interpreted by the decisions of this Court.

3. Section 3(2) defines Excise Officer as

A Collector or any officer or person appointed or invested with powers under Section 10.

4. All Sub-Inspectors of Police have had certain powers under Section 10 conferred upon them by a Government notification. A question might have arisen, in the absence of rulings which I must follow, as to whether a Sub-Inspector should be considered to be an Excise Officer only if all the powers conferable under Section 10 have been conferred upon him, or whether if anyone of numerous powers contemplated by that section has been conferred upon him, he

should be considered to be an Excise Officer. Emperor v. Chattar Singh 21 ALJ 922 : 82 Ind. Cas. 705 : 10 O & ALR 293 : 46 A 158 : AIR 1924 All 267 : 25 Cr.LJ 1345 : LR 5 A 40 Cr, affirms the latter part of the question mentioned above, Chedi v. Emperor : AIR1932 All187 , to which my attention has been drawn by the learned Assistant Government Advocate and which is a decision by a learned Single Judge of this Court, has also laid down, on the authority of the Bench decision quoted before, that a Sub-Inspector, on whom any of the powers referred to in Section 10 has been conferred, is an Excise Officer, as defined in Section 3 (2) of the Act. In this view, the Magistrate trying this case should be deemed to have taken cognizance of the offence on the report of an 'Excise Officer', as required by Section 70 of the Act.

5. There is no case for interference. Let the reference be returned.