

Sheonandan Vs. Emperor

Sheonandan Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/475015

Court : Allahabad

Decided On : Feb-11-1935

Reported in : AIR1935All597; 155Ind.Cas.492

Appellant : Sheonandan

Respondent : Emperor

Judgement :

ORDER

Kendall, J.

1. This application is made against a conviction under Section 60(a), U.T. Excise Act of 1910. The circumstances of the case are somewhat, peculiar. A raiding party went to the house of the applicant and searched it, and found that he had in his possession one bottle of liquor. There was also a, small quantity of liquor in a tin and it is said that the applicant himself snick of liquor. He was therefore prosecuted under the Act, and was charged by the Magistrate in the following words:

That you on or about August 11, 1934 in your house were found in possession of country liquor seven bottles (1 gallon plus one bottle) in contravention of Rule 89(a) of the Excise Act.

2. Evidence was brought by the prosecution to prove that the applicant had purchased from Namdeo that day liquor amounting to one gallon in a tin, and it was also in evidence that a tin was found in his house which appeared to contain the remains of some liquor. The case for the prosecution, as it appears from the judgment of the Magistrate as well as from the charge, was that the applicant, although at the time of the raid he was only actually in possession of one bottle of liquor, had recently been in possession of a much larger quantity. The Courts found him guilty on the ground that he was in possession of a quantity larger than he was allowed by law. Rule 39 of the rules framed by the excise authorities and contained in, the Excise Manual prescribed the limits of the amounts allowed to be kept, for retail sale of various kinds of excisable commodities, and as regards country liquor, prescribes the limit of two bottles or one seer or 4 seers or 1 gallon according to circumstances. Ordinarily plain country spirit can only be sold by retail up to a quantity of one seer, and country fermented liquor up to a quantity of four seers. There is nothing to show what the liquor was of which the applicant was in possession when the raid took place, and which he was suspected of having thrown away. So far as the evidence in this case goes, it may have been country spirit or it may have been country fermented liquor, and in that case it would have been necessary for the prosecution to prove that he had been in possession of more than four seers. But even if it can be said that circumstances point very strongly to the conclusion that the applicant had swallowed or had thrown away a certain amount of liquor, there is nothing to show what amount was so disposed of and if it was country fermented liquor, there is nothing to show that the total quantity in his possession had amounted to more than four seers.

3. It has, been pointed out by Dr. Wali Ullah on behalf of the Crown that under Rule 436 it is not only the possession of country liquor in excess of the quantity prescribed in Rule 39 that is punishable, but also the possession of country liquor which has not been lawfully obtained, and it is therefore argued that the applicant has, been rightly convicted because he was in possession of a bottle of country liquor which he [has not proved that he obtained lawfully. The fact is that the applicant was never asked any questions about that particular bottle. His defence was that he only had one bottle in his possession, and. he said that he had not purchased it from Namdeo. If he had purchased it from Namdeo in the manner

suggested on behalf of the prosecution, his possession would have been unlawful, because Namdeo had no licence to sell liquor on the Ghazipur side of the Ganges. The prosecution witnesses however did not prove that the applicant had purchased liquor from Namdeo in the manner that has been set up. They were suspected of having been won over; but the Courts did not find this part of the case proved, nor would they have convicted the applicant, unless they had believed that he had been in possession of more liquor than he was allowed to possess under the provisions of Rule 436 read with Rule 39(a). I am of opinion that the application must be allowed on the ground that the applicant cannot be convicted of an offence with which he has not been charged and which is clearly of a different nature from the one with which he has been charged. I therefore set aside the order of conviction and direct that the applicant be acquitted and the fine, if paid, be refunded.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com