

Bhim Sen Vs. Emperor

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Court : Allahabad

Decided On : Feb-14-1916

Reported in : AIR1916All242; 33Ind.Cas.315

Judge : George Knox, J.

Appellant : Bhim Sen

Respondent : Emperor

Judgement :

George Knox, J.

1. The accused, Bhim Sen, has been convicted of an offence under Section 61 of the Excise Act of 1910. The accused was a person who was licensed to sell European liquors in Bazar Bazaza in the Meerut city. Apparently his license does not permit him to sell liquor after 9 P.M. A Preventive Inspector of Excise coming along at a time which he thought was five minutes past nine saw that Bhim Sen's shop was open. He is not able to say whether there was or was not any one in the shop at the time. In order to find out he took a boy aged 10 who was playing near by, gave him money to buy some liquor and over and above two pice for his trouble for so doing. The Preventive Officer had a chaprasi with him, he told the chaprasi to watch the boy and not let himself be seen. As the boy came out the chaprasi seized him, a bottle of liquor was in the boy's hands and on these facts Bhim Sen was convicted of an offence under Section 61 of the Excise Act, viz., for

selling spirits to a person apparently; under the age of 16 and of an offence under Section 64 for keeping his shop open after 9 PM. In appeal he was acquitted of the offence under Section 64. He comes here in revision and asks for an acquittal of the offence under Section 61, on the ground that his books which were regularly kept have not been taken into consideration which would have shown that the liquor was not sold to the boy as alleged, and secondly, because the sentence passed is unduly severe. After carefully considering the evidence and hearing all that can be urged on his behalf by the learned Counsel who appears for him, I am not prepared to find the offence under Section 61 not proved. At the same time I am surprised to find a Preventive Inspector acting as this man did. His zeal certainly outran his discretion and instead of preventing offences he was inciting offences. No offence would have been committed that night under Section 61 of the Excise Act had he not been the person who instigated and really abetted the commission of the offence. The evidence shows that he was anxious, if the word may be used, for an offence to be committed. The hunting this shop down on the ground that it was open 5 minutes after time and that a very doubtful 5 minutes, his picking up the lad and sending him in to buy liquor are acts to be strongly deprecated. To send a person to spy out whether a crime is being committed and to come back with information that it is being committed is one thing, but to engineer an offence in order to find out whether a person when tempted will commit the offence is quite a different thing. As I said before, but for the acts of the Preventive Inspector this offence would not have been committed that night. I allow the application so far that I reduce the fine from Rs. 50 to Rs. 15. I understand the fine has been paid, the surplus, therefore, will be at once refunded.