

Sheikh Munir Vs. Emperor

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Court : Allahabad

Decided On : Jun-25-1923

Reported in : 76Ind.Cas.19

Judge : Hallifax, A.J.C.

Appellant : Sheikh Munir

Respondent : Emperor

Judgement :

ORDER

1. Certain apparatus for the distillation of spirit was found in the house of the applicant and some parts of it were found to contain fermented Mahua and Mahua spirit which was not of Government manufacture. These facts establish that he was in possession of apparatus for the manufacture of Mahua spirit, which is an excisable article, and also that he had manufactured that article. He has been convicted of the offence of manufacturing an excisable article, mentioned in Clause (a) of Section 34 of the C.P. Excise Act, 1915 and also of the offence of possessing materials for such manufacture, mentioned in clause (f) of the same Section. For each offence he has been sentenced to rigorous imprisonment for six weeks, with an express order that the two periods of imprisonment shall not be concurrent.

(2) For the applicant it is contended that the offence of manufacture necessarily includes that of possession, and the two offences cannot be called 'distinct' for the purposes of Section 35 of the Criminal Procedure Code. The proposition appears to be sound, and was accepted by Parsons and Ranade, JJ; in *Queen-Empress v. Bhawa Sardar* 1 Bom. L.R. 344 apparently as almost self evident. The possession of distilling apparatus is in its essence no offence but merely evidence of the offence of illicit distillation, but it is such strong evidence and further evidence is so often difficult to procure that the possession has been made itself an offence. But to pass separate sentences for the two offences is like passing separate sentences for assault, causing hurt, causing grievous hurt and murder on a man who killed another.

(3) But I do not conceive it to be my duty in revision, whatever it may be in appeal, to set right merely formal illegalities which do not result in injustice. The Magistrate obviously considered the single offence committed to be deserving of rigorous imprisonment for twelve weeks, but he made the mistake of calling it two distinct offences, both of which certainly had been committed though they were not distinct, and of recording half the sentence as passed for each of them. The difference is entirely of words and not of substance. In such cases the proper course is to pass the full sentence appropriate to the facts found proved for each of the offences which those facts are held to constitute and to add an order that the periods of those sentences shall be concurrent. If that had been done here the result would have been the same, and, in my opinion, I am not only not bound to interfere in revision for the purpose of reducing the sentence which was, in the opinion of the Magistrate, appropriate to the facts of the case merely because a wrong form of words has been used in passing it, but I am bound to refrain from doing so. The application for revision is rejected.