

Faqira Vs. Emperor

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Court : Allahabad

Decided On : Jul-30-1929

Reported in : AIR1929All901a

Appellant : Faqira

Respondent : Emperor

Judgement :

Sen, J.

1. Faqira is a Chamar by caste and is a resident of village Olri in the District of Saharanpur. He was convicted by Mr. Rajendra Narain, Magistrate, First Class, under Section 60(a), United Provinces Excise Act (Local Act 4 of 1910) and sentenced to three months' rigorous imprisonment. The learned Sessions Judge on appeal has affirmed the conviction but reduced the sentence to a fine of Rs. 10. Faqira challenges the legality and propriety of the conviction by the Courts below and comes up before this Court in revision.

2. The date of the occurrence was 24th March 1929, which by a curious coincidence happened to be the day of the Holi celebration. On that day men of the caste and the class to which Faqira belongs notoriously indulge in strong drinks.

3. Mr. Abdul Rauf Khan, Sub-Inspector of Bargaon Police Station having received an information that Faqira was in possession of illicit liquor raided his house. Two bottles containing some liquid were discovered under a pulla in the courtyard. There was a struggle between a police constable and Faqira over these bottles and it appears that these two bottles were smashed in the course of the struggle. Two other bottles alleged to have contained illicit liquor were found inside the house in a room. The contents of these two bottles were not subjected to any chemical test. The Excise Officer who examined these bottles appears to have applied what he calls the small test, and according to him one of the bottles contained 36.2 U.P. and the other 27.1 U.P. liquor. According to the Excise Inspector, it was possible for 35 U.P. liquor to reach the strength of 26.2 by exposure. There are certain facts relating to these bottles which appear to be shrouded up in complete mystery and no attempt has been made on behalf of the prosecution to unravel the same. The learned Sessions Judge noticed it and I cannot fail to take notice of it that the bottles bore on the mouth the seal of one Munawwar Ali who was not a search witness and who lived at a distance of nearly two miles from Olri. The bottles were not securely stoppered. The learned Sessions Judge finds and it is a finding which is completely destructive of the case for the prosecution that

it is possible for the contents of the bottles to have been subsequently changed.

4. How could it be said under the circumstances that Faqira was in possession of illicit liquor? How can the aforesaid finding be reconciled with the remark of the learned Sessions Judge that

in spite of the irregularities committed it can hardly be disputed that a small quantity of illicit liquor was found in the house owned by the appellant.

5. As a matter of fact the matter is disputed and is very vigorously disputed and upon the findings it is impossible to sustain the conviction of Faqira under Section 60(a), Excise Act.

6. It has been argued that the search made by the police was irregular. The Sub-Inspector in view of the Government Notification dated 13th July 1910, was a

Police Officer invested with certain powers under the authority exercisable by the Local Government by virtue of Section 10, Excise Act, and was 'an Excise Officer' within the meaning of Section 3, Sub-clause (2) of the Act. It is admitted that the Sub-Inspector had not armed himself with a search warrant. It is more than doubtful if the Sub-Inspector was under the provisions of Section 53 of the Act competent to institute a search. The powers conferred by Section 53 are limited to the Collector or any other Excise Officer not below such rank as the Local Government may prescribe. Assuming that the Sub-Inspector was qualified to search the house, he does not appear to have recorded the grounds of his belief that the house of Faqira contained prohibited liquor.

7. It is to be regretted that the search was not conducted in the presence of two respectable persons of the vicinity. The only witnesses to the search were the village mukhia and the chaukidar of the village. Section 103, Criminal P.C., provides that before making a search under Chap. 7 of the Code, the officer or other persona about to make it shall call upon two or more respectable inhabitants of the locality in which the place to be searched is situate to attend and witness the search and may issue an order in writing to them or any of them so to do.

8. Any officer authorized by law to make a search ought to exercise the very greatest caution in fulfilling the formalities required by law for making a search and providing every possible safeguard so as not to allow any handle for adverse criticism. It is to be regretted that the proper safeguards were not provided in the present case.

9. The result is that I allow the application, set aside the orders of the Courts below and acquit Faqira of the offence charged. The fine if paid will be refunded.