

In Re: Dop Raj Subba

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Court : Sikkim

Decided On : May-29-2000

Reported in : 2001CriLJ3096

Judge : Ripusudan Dayal, C.J. and; Anup Deb, J.

Acts : [Sikkim Excise Act, 1992](#) - Sections 34

Appeal No. : Criminal Revision 33 of 2000

Appellant : In Re: Dop Raj Subba

Advocate for Def. : N.B. Kharga, Adv.

Advocate for Pet/Ap. : S.P. Wangdi, P.P. and; Karma Thinlay, Asstt. Govt. Adv.

Disposition : Petition allowed

Judgement :

ORDER

Anup Deb, J.

1. This criminal revision was registered by this Court suo motu to be satisfied as to the correctness, legality and propriety of the order dated 23rd February, 2000 passed in Criminal Case No. 8 of 2000 by the Judicial Magistrate, East, whereby for the offence under Section 34(a) of the [Sikkim Excise Act, 1992](#), the accused

was sentenced to undergo imprisonment till the rising of the Court and a fine of Rs. 1000/- and in default of payment of fine to undergo further SI for three months. Section 34(a) provides that the offence mentioned therein shall be liable to imprisonment for a term which may extend to one year and shall also be liable to fine which may extend to one thousand rupees but in no case the Court shall award a sentence of imprisonment less than three months and a fine of five hundred rupees. The order of sentence by the learned Judicial Magistrate is contrary to the specific statutory provision and, therefore, deserves to be set aside.

2. In the result, the Criminal Revision is allowed, the order dated 23rd February, 2000 is set aside and the matter is remitted back to the Court of Judicial Magistrate, East to proceed further according to law. Accused person shall be present in the Court of Judicial Magistrate, East on 12-6-2000.

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