

Hadu Sahu Vs. the State

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Court : Orissa

Decided On : Aug-11-1964

Reported in : AIR1967Ori37; 1967CriLJ394

Judge : R.L. Narasimham, C.J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 243, 340 and 342;
[Constitution of India](#) - Article 22(1)

Appeal No. : Criminal Revn. No. 39 of 1964

Appellant : Hadu Sahu

Respondent : The State

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Y.S.N. Murty, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

R.L. Narasimham, C.J.

1. This is a revision petition against the appellate judgment of the Sessions Judge of Berhampur maintaining the conviction of the petitioner under Section 47(a) of

the Bihar and Orissa Excise Act, but reducing the sentence passed on him to one month's rigorous imprisonment and a fine of Rs. 500.

2. It appears that at about 8 p.m. on 12-9-1963 the police party caught the petitioner red-handed with an earthen pitcher containing about 10 gallons of illicitly distilled liquor. The seizure list shows that he was attempting to conceal the liquor inside the well in his house when he was arrested. Soon after the seizure, he was tried before the Sub-divisional Magistrate of Chatrapur on the very same night. When the substance of the accusation was explained to him he pleaded guilty. The Magistrate then questioned him under Section 342 Cr. P. C. and the petitioner admitted that from inside the well a pitcher containing 10 gallons of illicitly distilled liquor was recovered. He was then convicted on his plea of guilty and sentenced to three months rigorous imprisonment and a fine of Rs. 1,000 which was reduced on appeal as stated above.

3. The very date of the trial shows that the trial was perhaps held locally by a mobile court, though the court has not expressly said so in its order. Mr. Murty however urged that the close proximity between the date and time of the seizure of the excisable article and the date of the trial itself is sufficient to show that the petitioner did not get a reasonable opportunity to defend himself by engaging a lawyer and that consequently Article 22(1) of the Constitution was contravened. But it does not appear that the petitioner asked the court to grant him an adjournment to enable him to engage a lawyer to defend himself. Even in the grounds of appeal before the learned Sessions Judge and in the grounds of revision before this court, the petitioner has not taken any such plea.

Mr. Murty urged that even without an express request from the accused, the court ought to have granted him an adjournment for that purpose and should not have held a trial at such a late hour of the night in an out of the way place. It is true that ordinarily trial should take place during court hours and in court premises so that the parties may be able to avail themselves of legal assistance. But there may be extraordinary situations when trial may be held outside court hours provided the accused does not object to such a course. This exception generally applies for the trial of petty offences triable as summons cases where mobile courts trying at the

spot generally prove effective.

It is true that even in the trial of summons cases if the accused had asked for adjournment with a view to enable him to engage a lawyer to defend himself, the Magistrate would have granted him an adjournment, but here it is not asserted in any of the petitions that the accused expressly asked for adjournment for that purpose. Similarly, it is not stated anywhere that the statement made by the petitioner under Section 342, Cr. P. C. was not made voluntarily and was obtained by coercion. Under these circumstances I am not inclined to interfere with the conviction based on the clear admission of guilt by the petitioner. He had expressly admitted that 10 gallons of liquor were recovered from an earthen pitcher kept inside his well.

4. Mr. Murty relied on certain observations in AIR 1948 Mad 492 and AIR 1962 Raj 216 but those cases are distinguishable because, there, the trial was in a warrant case where the accused was entitled to an adjournment for the purpose of cross-examination and defence. But they have no application for the trial of summons cases where in the interests of all concerned, speedy disposal is necessary, subject of course to the requirements of a fair trial, and unless the accused asks for an adjournment or does not plead guilty, there is no legal bar to the Magistrate proceeding with the trial and disposing of it on admission of guilt.

5. As regards the sentence also I am not inclined to interfere. The lower appellate Court has reduced the sentence of imprisonment and fine and there seems no justification for further reduction. The quantity of liquor recovered is very large and it was kept concealed inside the well of the petitioner's house. The petitioner is a middle aged man aged about 40 years and there is no extenuating circumstance in his favour. The conviction and sentence are therefore maintained and the revision petition is dismissed.