

The State Vs. Shri Vishnu

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Court : Rajasthan

Decided On : Jun-08-1955

Reported in : 1956CriLJ167

Judge : Nigam, J.

Appellant : The State

Respondent : Shri Vishnu

Judgement :

ORDER

Nigam, J.

1. On receipt of information, a raid was organised and at about 11-15 p. m., on 25-5-1954 the accused Bishen alias Vishnu is alleged to have been caught red-handed while selling liquor at a shop. The case was investigated into by Sub-Inspector H. B. D. Baijal of Police Station Kotwali, Ajmer, and after investigation a charge sheet was presented. On 20-10-1954, an application was presented on behalf of the accused urging that the complainant was absent on 13-9-1954, and that therefore the accused was therefore entitled to an acquittal.

The learned Honorary Magistrate was of the opinion that as the complainant was absent, the accused was entitled to an acquittal. He, therefore, acquitted the accused. Against that order of acquittal, the State has come up in revision. I have

heard the learned Public Prosecutor and the learned Counsel for the accused.

2. Section 33, Excise Regulation (Regulation No. I of 1915) makes the possession of the excisable articles punishable. Section 52 of the same Regulation authorises any Police officer to arrest without a warrant any person found committing an offence punishable under Section 33 of the Regulation. Thus, an offence under Section 33 of the Regulation is a cognizable offence within the definition of Section 4(1)(f), Criminal P.C.

A Police officer would thus be entitled to submit a report in writing of facts constituting an offence and the Magistrate would be authorised to take cognizance of the same under Section 190(1)(b), Cr. P.C. Such a report cannot be considered a complaint. The definition of complaint given in Section 4(1)(h) of the Code clearly excludes the report of a Police officer. In these circumstances, it is clear that Section 247, Criminal P.C. has no application to the facts of the case.

3. The learned Counsel for the accused does not contest this position. Accordingly, I accept this reference, set aside the order of acquittal recorded by the learned Honorary Magistrate and direct a re-trial in accordance with law. The accused is present and he is directed to attend the Court of the District Magistrate on Wednesday, 15-6-1955, at 11.-00 a.m., to take a date for further proceedings.