

State Vs. Chhoga Lal

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Court : Rajasthan

Decided On : Jan-08-1986

Reported in : 1986WLN(UC)7

Judge : Kishan Mal Lodha and; Mohini Kapoor, JJ.

Appeal No. : S.B. Criminal Appeal No. 745 of 1980

Appellant : State

Respondent : Chhoga Lal

Disposition : Appeal allowed

Judgement :

1. This is an appeal Under Section 378(1) Cr. PC. against the judgment dated May 1, 1980 passed by the Additional Sessions Judge, Udaipur, by which he acquitted the accused respondent and reversed the conviction and sentence passed by the Judicial Magistrate to 1st Class, Udaipur, in Cr. Original Case No. 651/1974.

2. For the present purpose the material facts are there--The accused respondent was prosecuted for offence Under Section 54/67 of the Rajasthan Excise Act, 1950 (here in after referred to 'the Act') so he was found in possession of working still illicit liquor. A challan was presented by the Excise Inspector. The Judicial Magistrate No. 1, Udaipur, took cognizance of the offence and tried the case. He by his order dated July 4, 1978, convicted the accused respondent Under Section

54 of the Act and sentenced him to 4 months rigorous imprisonment and a fine of Rs. 300/-. In default there of to suffer rigorous imprisonment for month. The accused-respondent filed an appeal and the learned Additional Sessions Judge, Udaipur, by his order dated May 1, 1980, accepted the appeal and set aside the conviction and sentence on the ground that the Excise Inspector is not an Excise Officer and so he was not competent to file a charge sheet. Aggrieved the State of Rajasthan has filed this appeal.

3. The learned Additional Sessions Judge, Udaipur, while accepting the appeal and setting aside the conviction and sentence took note of Bhagwan v. State of Rajasthan (1979 Cr. L.R. (Raj.) 589) for holding that the Excise Inspector was not the Excise Officer for the purpose of Section 67(1) of the Act. There was divergence of judicial opinion among the Single Judge of this Court. But this has now been set at rest by a Bench decision in the State of Rajasthan v. Laxan Singh (1980 Cr. L.R. (Raj.) 557). In that case Sections (7) and 67(1)(a) of the Act and Rules 88 and 89 of the Rajasthan Excise Rules 1956 ('the Rules' here in after) were taken into consideration. The question that arose in the State of Rajasthan v. Laxman Singh's case (supra) was whether an Excise Inspector is an Excise Officer within the meaning of the expression 'Excise Officer' as defined Under Clause (7) of Section 3 of the Act and whether he can present a complaint or a report Under Clause (a) of Sub-section (1) of Section 67 of the Act on which cognizance can be taken by a Magistrate. The Division Bench held in view of Notification No. 5 and in view of Rules 88 and 89 of the Rules Excise Inspector have been invested with the powers of Excise Officer, and as such they are Excise Officers within the meaning of Section 3(7) of the Act. so they are competent to make a complaint or the report in respect of the offences enumerated in 67(l)(a) on which Magistrate can take cognizance. In view of this the order of acquittal passed in appeal by the learned Additional Sessions Judge, Udaipur cannot be sustained.

4. We allow this appeal and set aside the order of acquittal dated May 1, 1980, passed by the additional Sessions Judge, Udaipur, and send the case back to the Additional Sessions Judge, Udaipur, to dispose of the appeal afresh in accordance with law after giving the parties concerned an opportunity of hearing.

5. Let the record be sent to the Additional Sessions Judge, Udaipur, immediately.

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