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Court : Kolkata

Decided On : Jun-15-1955

Reported in : AIR1955Cal552,1955CriLJ1354,61CWN686

Judge : J.P. Mitter and ;Debabrata Mookerjee, JJ.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Section 260(1); ;Bengal Excise Act, 1909 - Sections 46 and 63

Appeal No. : Criminal Revn. No. 1329 of 1954

Appellant : Sreenath Malakar and anr.

Respondent : The State

Advocate for Def. : Nirmal Chandra Sen, Adv.

Advocate for Pet/Ap. : Ajit Kumar Dutta, Adv.

Judgement :

J.P. Mitter, J.

1. This is a petition for revision of an order of conviction and sentence under Section 46, Bengal Excise Act (Act V of 1909) for unlawful possession of a quantity of 'charas', an intoxicant. The petitioner was sentenced to 3 months' rigorous imprisonment and the intoxicant concerned was confiscated under

Section 63 of the said Act.

2. The prosecution case against the petitioner was as follows: On 17-5-1954; he was found carrying a leather portfolio which when opened was found to contain two cloth bundles, each containing 2 3/4 seers of 'charas'. Upon research of the person of the petitioner a paper packet containing 1/4 seer of 'charas' was recovered from his pocket. In respect of the said quantities of 'charas' a seizure list was prepared in presence of witnesses who signed it.

The petitioner could not produce any license or permit when asked to account for his possession ofthe offending intoxicant. The samples taken of the 'charas' were sent to the Chemical Examiner who upon proper analysis found the commodity to be 'charas .

3. The petitioner's defence was that he had been mistakenly identified as the culprit.

4. The clear finding of each of the Courts below that the petitioner was found in unlawful possession of the intoxicant cannot be interfered with in revision, and the only point which requires consideration is whether the summary trial of the petitioner was valid.

5. Mr. Ajit Kumar Dutta appearing on behalf of the petitioner has argued that although a person convicted under Section 40, Bengal Excise Act, 1909, is liable to imprisonment for a term which may extend to six months, or to fine which may extend to Rs. 1,000/-, or to both, the additional punishment by way of confiscation provided under Section 63 of the Act renders a summary trial for an offence under Section 46 of the Act illegal.

6. The material portions of Section 260, Criminal P. C. which provides for summary trials are as follows:

'260 (1) Notwithstanding anything contained in this Code.-

(a) the District Magistrate,

(b) any Magistrate of the first class specially empowered in this behalf by the Local Government, and

(c) any Bench of Magistrate invested with thepowers of a Magistrate of the first class andspecially empowered in this behalf by theLocal Government,may, if the or they think fit, try in a summary way all or any of the following offences:

(a) offences not punishable with death, transportation or imprisonment for a term exceeding six months;

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(2) When in the course of a summary trial it appears to the Magistrate or Bench that the case is one which is of a character which renders it undesirable that it should he tried summarily, the Magistrate or Bench shall recall any witnesses who may have been examined and proceed to re-hear the case in manner provided by this Code.' There is no question that having regard to the punishment provided for, an offence under Section 46, Bengal Excise Act, can he tried summarily in terms of Clause (a) of Sub-section (1) of Section 260 which has already been set out. The question is whether the provision for confiscation under Section 63 of the Excise Act adds to the punishment under Section 46 so as to take the case out of Section 260 of the Code. In our view the confiscation provided by Section 63 of the Excise Act is merely a consequence of the conviction and does not form part of the punishment for the offence under Section 46.

It was held in the Full Bench case of -- 'The Empress v. Baidanath Das', 3 Cal 366 (A), that an offence under Section 49, Bengal Abkari Act, XXI of 1856, could he tried summarily, the confiscation provided being merely a consequence of the conviction and not forming part of the. punishment for the offence.

7. In our view, the present case is covered by Clause (a) of Section 260 of the Code. That being, the position, the learned Magistrate was right in trying the petitioner summarily. This application must, accordingly, fail.

8. In the result, the Rule is discharged. The petitioner who is on bail must surrender and serve out the sentence.

Debabrata Mookerjee, J.

I agree.

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