Radoinath Shaha Vs. Radoinath Shaha

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Court : Kolkata

Decided On : Sep-06-1881

Reported in : (1882)ILR8Cal195

Judge : Mitter and ;Maclean, JJ.

Appellant : Radoinath Shaha;The Empress

Respondent : Radoinath Shaha

Judgement :

Mitter, J.

1. The petitioner, it is said, owns a wine-shop in the village of Chundun Pookur, within the jurisdiction of the Police station of Barrackpore. On the night of the 12th July he was arrested by Inspector A.H. Prichard, and taken to the Police-station. There the Inspector entered a charge against him for selling and having in possession English liquor without a license. He was released on bail, being directed to appear before the Magistrate of Barrackpore the next day, the 13th July, to answer these charges. On his application, the case was postponed to the 25th July, on which date the Magistrate tried him summarily for the following offences:

1st.--Refusal to produce license (Section 59).

2nd.--Illegal sale of imported liquors (Section 53).

3rd.--Illegal possession of imported liquors (Section 64).

4th.--Breach of condition of license (Section 59).

2. The petitioner pleaded not guilty to all the charges. But he was found guilty under Sections 53 and 59 of the Act, and fined Rs. 100. It is not stated by the Magistrate whether both the charges under Section 59 were established, or only one of them. Under Clause (h) of Section 227 of the Criminal Procedure Code, the Magistrate is required to make a brief statement of the reasons for the conviction. But no such statement has been recorded. The trial has been indeed too summary, the record and the register kept under Section 227 furnishing no information as to the ground upon which the conviction is based.

3. Now, as far as the charges one and four are concerned, we think the Magistrate should not have tried the petitioner for them. He was arrested, and a charge was entered against him for selling and having in his possession imported liquor without a license. He would, therefore, be prepared to meet these charges alone. It does not appear that, between the 12th of July and the 25th of that month, when the trial took place, the petitioner had any intimation that he would be called upon to meet other charges. In our opinion, therefore, he should not have been tried for the first and the fourth charges mentioned above.

4. As to the charge under Section 64, probably the Magistrate was not aware that that section has been repealed by Act IV of this year, Section 2. There remains the charge under Section 53 for the sale of imported liquor without a license. In the absence of the reasons for the conviction, it is impossible for this Court to judge how far this conviction is legal. From the explanation submitted by the Magistrate, it does not appear that there was any evidence of the sale of imported liquor. Be that as it may, we think that, under the circumstances of this case, the conviction should be quashed on the ground that the Magistrate omitted to record briefly the reasons for his finding which he is required to do under Section 227 of the Criminal Procedure Code. We accordingly set it aside, and direct a re-trial of the petitioner for the alleged offence of selling imported liquor without a license under Section

53. The question, whether the petitioner will be entitled to the refund of the fine or not, will depend upon the result of the re-trial.

Maclean, J.

5. The proceedings as recorded in the register kept under 3. 227, Act X of 1872, are not sufficient to indicate that the conviction is supported by proper evidence. The brief statement of the reasons for conviction required by Clause (h) is entirely wanting, and the explanation contained in the Magistrate's letter of 19th August is not satisfactory.

6. In the first place it appears, that the accused, so far from not producing a license, produced two. They were, however, for sale of country spirits. It is not alleged that the accused had a license himself for sale of imported liquor. So he could not be punished for not producing it.

7. The next charge is for selling imported liquor illegally. The record does not show how this charge was proved. But it appears that one Dwarkanath Ghose produced a license, and stated that the accused was his servant. This the Magistrate says he does not believe, having regard to something that passed in his Court in May last. That record is not evidence in this case; but if it were, the presumption is, that the quarrel that occurred there has been followed by an alliance between the two men. If Dwarkanath is selling spirits at two shops under score of one license, he should be proceeded against for any offence he thus commits; and the accused, if he abets that offence, may also be proceeded against as an abettor.

8. Possession of imported liquor must be dealt with under some section other than Section 64, which has been repealed by Beng. Act IV of 1881.

9. The last charge is of a breach of the condition of his license. The record does not specify the condition broken.

10. Lastly, the conviction should have stated which of the offences was punished, and by what amount of fine, as the penalty under Section 59 cannot exceed Rs. 50 for one offence.

11. I concur in setting aside the conviction and directing the Magistrate, if he thinks necessary, to re-try the accused.