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Court : Kolkata

Decided On : Nov-02-1881

Reported in : (1882)ILR8Cal207

Judge : Prinsep and ;Tottenham, JJ.

Appellant : Baney Madhub Shaw and anr.;The Empress

Respondent : Baney Madhub Shaw and anr.

Judgement :

Prinsep, J.

1. The petitioners in this case are two servants of a licensed vendor of spirits, who have been convicted, each of them, for having, in breach of their license,--firstly, sold a bottle of brandy which was carried off and not drunk on the premises; and secondly, for having refused, on the demand of the Police Inspector, to produce their license.

2. As regards the first breach, an objection is taken, that the master, the licensed vendor, was alone liable, and not the servants. Two judgments of this Court have been considered by us on this point: In re Ishur Chunder Shaha 19 W.R., Cr., Rul., 34, and the other, recently delivered by Mr. Justice Pontifex and Mr. Justice Field The Empress v. Nuddiar Chand Shaw I.L.R. 6 Cal. 832; S.C. 8 C.L.R. 152. These decisions are in conflict. Our opinion inclines to the decision in In re Ishur Chunder

Shaha 19 W.R., Cr. Rul., 34; and having regard to the fact that that decision was not brought to the notice of the Judges who decided the more recent case, we think that we are justified in following it. We accordingly hold, that the conviction of the servants is not necessarily illegal.

3. The next objection taken is, that, inasmuch as there was only one breach of license in this respect there should have been only one penalty inflicted; whereas by reason of the maximum fine having been imposed on each of the servants, the penalty has been doubled. It appears to us that the Magistrate was competent to punish each of the servants separately in the manner he has done, if he found, as he apparently has found, that each of them committed a breach of the license. Section 59 of Beng. Act VII of 1878 no doubt declares that the amount may be recoverable from the master; but it does not necessarily follow that the servants may not be liable for the full amount prescribed by the law, although, possibly, the master may reasonably object to be saddled with more than one full penalty for the carelessness or neglect of his servant. We, therefore, think that the convictions and fines imposed, as regards this breach of the license, should be sustained.

4. As regards the other penalties for breach of license, in consequence of refusal to produce the same on demand of the Inspector Fitzgerald, we are of opinion that the convictions and fines must be set aside. It has been argued by the learned Standing Counsel, who appears to support the convictions, that, reading Sections 41 and 42 together, the officers empowered under Section 42, among whom the Inspector in the present case is, must be regarded as excise officers within the terms of the Act, and that it would be impossible for a Police-officer, so acting as an excise officer, to discharge his duties, if he had not power to demand the production of a license. But, although he might properly demand the production of the license, and on refusal to produce it, proceed to arrest or to confiscate as allowed by the Act, it would not necessarily follow that such refusal would render the license-holder or his servants liable to fine under Section 59 for breach of the license, unless it were expressly provided that he or they were bound to produce it. The condition contained in the license is to the following effect: 'That he' (the license-holder) 'produce for inspection, on demand of any excise officer above the rank of a head constable or chuprasi, his license and accounts,' &c.;

5. Now, if the term the 'excise officer' had alone been used in that clause of the license, we should not be disinclined to hold that it should be interpreted to mean an excise officer within the meaning of the Abkari Act; and therefore a Police-officer like Inspector Fitzgerald was duly empowered under Section 42 of the Act. Inasmuch as that clause of the license proceeds to declare that the excise officer must be above the rank of a head constable or chuprasi, we are of opinion that it was the intention of those who drew up this form of the license that the excise officer should be an excise officer of the higher grades; such an officer only and not any Police-officer who may be exercising the powers of an excise officer. In this view of the terms of the license, we think that the conviction as regards the second breach must be set aside, and the fines, if paid, refunded.

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