

The State Vs. Shanti Dutt and ors.

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Court : Himachal Pradesh

Decided On : Dec-10-1951

Reported in : AIR1952HP61

Judge : Chowdhry, J.C.

Acts : [Punjab Excise Act, 1914](#) - Section 24

Appeal No. : Criminal Appeal No. 3 of 1951

Appellant : The State

Respondent : Shanti Dutt and ors.

Advocate for Def. : Ved Vyas, Adv.

Advocate for Pet/Ap. : L.N. Sethi, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Chowdhry, J.C.

1. This is a Government appeal against the acquittal of Shanti Dutt, Amin Chand and Tokha by the learned Additional Sessions Judge of Chamba on their appeal against conviction by a learned first class Magistrate under Section 61 (1) (a) of the [Punjab Excise Act, 1914](#), for an offence punishable under Section 24 (4) of

that Act and Rule 10. 23 of the Punjab Import, Export, Transport, and Possession Rules. The first two were convicted as actual offenders and the last vicariously under Section 77 of the said Act. The offence consisted in possession of country liquor in excess of the limit of retail sale, viz., in excess of one bottle.

2. Shanti Dutt and Amin Chand are both residents of Chamba town, while Tokha is a resident of Hingiri, about 36 miles from Chamba, where he holds a licence for retail sale of liquor. The facts, which are not in dispute, are these. Tokha used to get his supply of country liquor from the wholesale dealer at Chamba, one Sanji Ram, through Amin Chand. On 9 Baisakh 2005, Amin Chand purchased four gallons, or 24 bottles, of liquor from Sanji Ram on behalf of, and for transmission to, Tokha. The full consignment was brought from the wholesale vendor's shop to the hospital, where both Shanti Dutt and Amin Chand are employed, and thence carried to the house of Shanti Dutt because it was much nearer. Out of it 13 bottles of liquor were despatched by Amin Chand to Tokha the same evening through a coolie but not the remainder as the coolie had some other load also to carry. The remaining 11 bottles of liquor were left by Amin Chand at the house of Shanti Dutt on the promise that as soon as a coolie was available in a day or two, the same will be despatched to Tokha. Ten days thereafter, i.e., on 19 Baisakh 2005, the police recovered these 11 bottles of liquor from the house of Shanti Dutt, and this led to the prosecution and the conviction of the three respondents by the First Class Magistrate for the said offence.

3. The Punjab Import, Export, Transport and Possession Rules could not be produced by the Government Advocate although he took time for doing so. These Rules were not produced even in the two Courts below. That is however immaterial since Section 24 (1) of the Act serves the purpose as well. It may be noted here in passing that on the date when the offence was committed the Chamba Excise Act of 2003 S., and not the [Punjab Excise Act, 1914](#), was in force here. That again makes no difference since the corresponding provisions in both the Acts are identical.

4. The Financial Commissioner has admittedly established no warehouse at Chamba so far for depositing or keeping intoxicants under Section 22 of the Act.

The practice has therefore grown up, as admitted by the prosecution witness Sanji Ram, the wholesale dealer, that retail sale licensees outside Chamba get their supplies from the wholesale dealer through agents, and that these agents have to keep the liquor in the course of transit for several days either with the wholesale dealer himself or at the houses of different persons in Chamba town. The maximum period for which liquor has in the past been kept in Chamba pending arrangement for its transit has been described by the said Sanji Ram as four days. It was argued by the learned Government Advocate that Amin Chand was not entitled to keep the liquor at the house of Shanti Dutt but should have transmitted it to Tokha soon after its withdrawal from the wholesale dealer, and that Shanti Dutt was in no case entitled to keep the liquor in his house. If these two respondents, or any of them, be liable, the liability of the third respondent Tokha would follow as a matter of course under Section 77 of the Act. I am, however, of the opinion that the view of the learned Sessions Judge that neither Shanti Dutt nor Amin Chand had committed the offence is correct.

5. Now, it is a matter of common occurrence that intoxicants are in possession of various persons in the course of transit from one place to another, e.g., cartmen, ship owners, coolies and so forth. Such persons cannot, of course, be said to be persons in possession within Section 24 of the Act. It is therefore reasonable to hold that the person in possession contemplated by that provision is one who is in possession of the intoxicant on his own behalf, and not, one who is in temporary custody or charge of the same on behalf of another in the course, and for purposes, of transit. What is such temporary custody or charge depends upon the facts and circumstances of each case, so that what is temporary custody or charge on behalf of another person initially may be converted into illegal possession at a subsequent stage. This may, for instance, take place where a person initially in charge of the intoxicant on behalf of another person in the course, and for the purpose, of transit detains the consignment longer than necessary for transmission or for a purpose unconnected with the transmission. I am supported in this view basically by the Calcutta ruling reported as the '*CROWN v. HENRY KYTE*', 9 Cal 223.

6. Applying the above principle to the facts of the present case, it is clear that there is no intrinsic difference between Amin Chand and Shanti D,utt for both of them were persons in custody of the liquor in question on behalf of, and for transmission to, Tokha and not on their own behalf. There is no suggestion that either of them had any other purpose than their transmission to Tokha in detaining the goods for ten days. Admittedly, it was quite in order for goods to be detained at Chamba for as much as four days in the course of transit. The prosecution has led no evidence to 'prove that the 10 days for which the liquor in question was detained in the present case was a period longer than necessary for transit of the consignment. Taking into consideration the tardy means of communication and the long distance to be covered, this period was prima facie not unreasonable. The temporary custody or charge of the liquor by Shanti Dutt and Amin Chand had not, therefore, been converted into illegal possession by the time of its seizure by the police. I, therefore hold, agreeing with the learned Sessions Judge, that neither Shanti Dutt nor Amin Chand was guilty of the offence in question, and therefore Tokha was also not guilty.

7. The appeal is dismissed and the acquittal of the respondents is maintained.