

Ram Narain vs State on 28 July, 1955

Equivalent citations: AIR1956ALL141, 1956CRILJ189, AIR 1956 ALLAHABAD 141

ORDER

Oak, J.

1. These three connected references by the learned Sessions Judge of Etawah arise out of three connected prosecutions under the U. P. Excise Act. The facts of the case are that Ram Narain is the licensee for a country liquor shop. He had to pay monthly instalments towards his licence fee. Ram Narain did not pay a number of monthly instalments in time, as required by the conditions of his licence. The defaults started from October, 1952.

The Excise Inspector made an inspection on 29-12-1952, and noticed that instalments for October, November and December 1952 had not been paid by Ram Narain. He was, therefore., prosecuted under Section 64 (c), Excise Act for wilful failure to pay monthly instalments in breach of the conditions of the licence. The accused was fined Rs. 5/- under Section 64 (c), U. P. Excise Act. That conviction has now become final.

The Excise Inspector visited Ram Narain's shop again in January, February and March, 1953. Three separate prosecutions were started on the basis of the three inspections dated 31-1-1953, 13-2-1953 and 13-3 1953 in addition to the prosecution which was based on the inspection dated 29-12-1952. The accused was again convicted in the three cases based on the Inspections of January, February and March, 1953. In each of these cases the accused pleaded guilty, and he was fined Rs. 5/- under Section 64 (c), U. P. Excise Act.

Against these, three orders of conviction Ram Narain filed three separate revision applications before the learned Sessions Judge of Etawah. These revision applications were numbered as 70, 71 and 72 of 1954. The learned Sessions Judge has recommended that the convictions of the accused in the three cases should be set aside. In the alternative, the convictions should be so set aside or altered as to avoid convicting the accused twice for the same offence. This order of reference has given rise to three references, which have been numbered as 350, 357 and 358 of 1954.

2. The first point raised by the learned Sessions Judge is that, the record maintained by the trial Court was defective. Against item No. 5 of the printed form for summary trials (offence complained of) Section 64 (c), U. P. Excise Act was noted. The learned Sessions Judge has observed that, this note was not sufficient to give the accused an idea of the nature with alleged offence. There is some force in this contention.

However, one must remember that the accused has already been convicted for a similar offence, and that conviction has become final. In the present cases also the accused person expressly stated that for certain months he had failed to pay instalments, and admitted his guilt. It does not, therefore, appear that the accused was prejudiced on account of the defective record maintained by the trial Court.

3. Now I pass on to the main point raised in the reference. The point is that the accused has been convicted more than once for the same offence. This contention seems to be well-founded. The records of the four cases show that in the, case in which conviction has become final, the conviction was for failure to pay instalments in time for the months of October. November and December, 1952.

In summary trial No. 78 the learned Magistrate convicted the accused for his failure to pay instalments for November and December, 1952 and January, 1953.

In summary trial No. 79 the conviction is with respect to default for December 1952 and January 1953. In summary trial No. 86 the conviction relates to default for November and December 1952 and January. 1953. It will thus be seen that, default for the same months forms the basis of conviction in more cases than one. It is to be seen whether such repeated convictions relating to the default of the same month is permissible under the U. P. Excise Act.

4. In all these cases the accused has been convicted under Section 64 (c) of the Act. Section 64(c) of the Act states:

"Whoever being the holder of a licence

..... wilfully does or omits to do anything in breach of any of the conditions of the licence, permit or pass not otherwise provided for in this Act shall be punished"

The question arises, whether Section 64 (c) contemplates repeated punishment for failure to pay an instalment for a particular month.

4A. The licence issued to the accused is not on the record. I, therefore, do not know the exact language of the condition, which was broken by the accused. Presumably, the licence issued to the accused was similar to the form printed at page 206 of Vol. II of the Excise Manual. The printed form is for the licence for the retail sale of country spirit for consumption 'on' and 'off the premises under auction system.

Certain special conditions are given in this form, The first special condition is that, two months licence fee has to be paid as security deposit at the time the auction bid is accepted. The licensee has to pay the balance in monthly instalments. These instalments have to be paid on the first of every month from April to January. Thus, according to the prosecution, the accused did not pay instalments on 1-10-1952, 1-11-1952, 1-12-1952 and 1-1-1953, as required by the conditions of the

licence.

5. The accused was repeatedly prosecuted, presumably on the footing that the failure to pay the monthly instalment is a continuing offence. This position is not supported either by the conditions of the licence printed in the Excise Manual or the language of Section 64 (c), U. P. Excise Act. Under the terms of licence the accused had to pay a certain sum of money on 1-11-52.

The accused failed to pay that amount on 1-11-1952. The offence was complete the moment the accused failed to pay the particular instalment on the due date. The accused could not be punished again and again because he failed to pay that particular instalment in December, 1952, January 1953 and so on. I, therefore, agree with the learned Sessions Judge that, the successive prosecutions of the accused for the defaults is hit by the principle that, no person shall be prosecuted and convicted for the same offence more than once.

6. We have seen that in one case the accused was convicted for defaults for October, November and December, 1952. That conviction has become final. The accused cannot again be convicted with respect to defaults for October, November and December, 1952. In case No. 236 of 1954 (Summary Trial No. 78, and Revision No. 72) the accused has been convicted with respect to defaults for November 1952, December 1952 and January 1953. The conviction is bad in so far as it relates to defaults for November 1952 and December 1952.

There is no objection to the conviction, so far as it relates to default for January 1953. The conviction in the previous case and case No. 236 of 1954 covered the entire period from October 1952 to January 1953. The same period or portions of the same period forms the basis of convictions in case No. 238 of 1954 (Summary Trial No. 79 and Revision No. 70), and in case No. 240 of 1954 (Summary Trial No. 86 and Revision No. 71). Convictions in the last two cases must be set aside for the reasons given above.

7. In the result, these three connected references are accepted as explained below:

8. The conviction and sentence of the accused in case No. 236 of 1954 (Summary Trial No. 78, Revision No. 72) will stand. But it will be understood that, this conviction is with respect to the default for January, 1953 only. I set aside Ram Narain's convictions and sentences in criminal case No. 238 of 1954 (summary Trial No. 79, Revision No. 70) and in criminal case No. 240 of 1954 (Summary Trial No. 86, Revision No. 71).

If the fines have been paid in these two cases, the fines shall be refunded.