

Azim Ullah vs State on 28 April, 1950

Equivalent citations: AIR1950ALL610, AIR 1950 ALLAHABAD 610

ORDER

Desai, J.

1. The applicant was prosecuted on a report of a station officer of a police station under Section 60, Excise Act, on the allegation that when his house was searched by the station officer he was found to be distilling illicit liquor. Evidence was led by the prosecution to prove that he was caught distilling illicit liquor and it was accepted by the trial Court, which convicted him under Section 60 (a) and (b), Excise Act. The trial Court sentenced him under Section 60 (b) to rigorous imprisonment for one year and refrained from passing another sentence under Section 60 (a) on the ground that the sentence (under Section 60 (b)) covered that offence as well. The appeal was dismissed by the Additional Sessions Judge, who upheld the finding of the trial Court that the applicant had distilled illicit liquor. There is a mistake in the judgment of the Additional Sessions Judge, inasmuch as he writes that the applicant was "acquitted" of the charge under Section 60 (a). What the trial Court did was to convict him under both 60 (a) and 60 (b), but to sentence him only under Section 60 (b). Of course it was quite wrong on the part of the trial Court to say that it would not pass any sentence under Section 60 (a). As only one offence was committed, only, one sentence could be passed, but the trial Court ought to have said that that sentence covers both the offences instead of saying that it would not pass a sentence for the other offence. If a Court convicts a person under two offences, it cannot refuse to pass a sentence under either of them. It may be obliged to pass one sentence, but that sentence must cover both the offences of which, he has been convicted.

2. The conviction was challenged solely on the ground that the trial Court took cognisance of the offences on a complaint or report of an authority other than an "excise officer." What was contended is that a station officer in charge of a police station is not an "excise officer" within the meaning of Section 70, Excise Act and in support of that contention State v. Badruddin, 1950 A. L. J. 263: (A. I. R. (37) 1950 ALL. 436: 51 Cr. L. J. 1152), was relied on. There Dayal J. remarked that the case was reported by a station officer in charge of a police station and not an "excise officer" and that, consequently, the Magistrate could not legally take cognisance of the offence. In the judgment there is no discussion of the meaning of "excise officer." This phrase is defined in Section 3(2), Excise Act as follows:

"'Excise Officer' means Collector or any officer or person appointed or invested with powers under Section 10." Section 10 to the effect that the Provincial Government may by notification "(c) empower officers to perform the acts and duties mentioned in Sections 48 and 64 (a), and empower officers or persons to perform the acts and duties mentioned in Section 50."

According to Para. 48 of the Excise Manual a police officer in charge of a police station has been invested with the power of Section 48 to enter and inspect places of manufacture and sale, and with the power of Section 50 to arrest, seize and detain persons in respect of offences punishable under Sections 60 (a) and (b), 62 and 63. Paragraph 74 of the Excise Manual makes it obligatory upon Excise officers of the Excise Department to cooperate with police officers in the detection and prosecution of excise offences. Paragraph 75 mentions a quarterly statement showing separately the cases sent up by the Excise staff and by the Police. If a station officer in charge of a police station were not an Excise Officer or were not empowered to make a complaint or report in respect of an offence punishable under the Excise Act, there could have been no excise cases sent up by the police. Farther, it is stated in para. 76 that in cases detected by the Police. Excise officers should place all available information, papers, etc., at the disposal of the police and should give all the assistance in their power in the furtherance of investigation and prosecution. This makes it clear that the police can also prosecute offenders under the Excise Act. As every station officer in charge of a police station has been empowered to perform the acts and duties mentioned in Sections 48 and 50, he is an "Excise Officer" within the meaning of Section 3(2) read with Section 10, Excise Act. As he is an Excise Officer, he can make a complaint or report of an offence on the basis of which a Magistrate is to take cognisance. As these provisions of the Excise Act and Manual were not brought to the notice of Raghubar Dayal J. I regret I am unable to concur in the view that a station officer in charge of a police station is not an "Excise Officer."

3. It was argued that an "Excise Officer" ' within the meaning of Section 70 must be an officer specially empowered to make a complaint or report, and that a station officer of a police station who has been empowered to perform the acts and duties mentioned in Sections. 48 and 50 may be an Excise Officer with reference to those duties, but cannot be said to be an Excise Officer within the meaning of Section 70. This argument is fallacious and does not appeal to me. There is no reason to believe that the Legislature made any distinction between one Excise Officer and another. There is nothing like one being an Excise Officer for certain purposes and another being an Excise Officer for other purposes. Any person who can be called an "Excise Officer", can make a complaint or report under Section 70; it would be quite irrelevant to consider how he became an Excise Officer, whether on account of his being invested with the power of making a complaint or report of a cognisable offence, or on account of his being invested with some other power. Once some power mentioned in Section 10 is conferred upon an officer, he becomes an "Excise Officer" as defined in Section 3(2), and any person who is an "Excise officer" as defined in that provision is an "Excise Officer" wherever that phrase is used in the Act. The fallacy in the argument of learned counsel for the applicant would be apparent from the fact that all the powers mentioned in the Act cannot be delegated by the Provincial Government. The powers that can be delegated by the Provincial Government are expressly mentioned in Section 10, and the power of making a complaint or report of an offence punishable under the Excise Act is not such a power. So, such a power could not possibly be conferred by the Provincial Government upon anyone. And if it could not be conferred, it cannot be argued that a station officer in charge of a police station, though he is an Excise officer for certain purposes, is not an Excise officer for the purposes of Section 70 because the power

mentioned in that section has not been conferred upon him.

4. I hold that the trial Court was fully competent to take cognisance of the offences committed by the applicant on the report of the station officer in charge of a police station.

5. The sentence of rigorous imprisonment for one year inflicted by the trial Court was reduced, on appeal, by the learned Additional Sessions Judge to rigorous imprisonment for two months. I strongly deprecate the infliction of a short term sentence like that of two months which does not serve any useful purpose. A sentence of six months' imprisonment cannot be said to be too severe for the offence of illicit distillation of liquor. The learned Additional Sessions Judge reduced the sentence, not on the ground that the sentence of one years' imprisonment or six months' imprisonment would be too heavy, but on the ground that in another case tried by the same Magistrate he had inflicted a sentence of fine only. It was quite illogical on the part of the learned Additional Sessions Judge to judge the severity of a sentence in one case on the basis of a sentence inflicted in another case, the facts of which were not before him. He ought to have determined the sentence on the basis of the gravity of the offence and that alone. As I am of the view that imprisonment must be inflicted for an offence of illicit distillation, I must maintain the sentence though, as I said earlier, I disapprove of short term sentences. I, therefore, maintain the conviction and sentence and dismiss this application. The applicant must surrender himself to undergo the sentence.