

Gobardhan vs The State on 16 December, 1955

Equivalent citations: AIR1959ALL53, AIR 1959 ALLAHABAD 53

ORDER

H.P. Asthana, J.

1. This is an application in revision by one Gobardhan who has been convicted under section 60 (a) and (f) of the Excise Act by a first class Magistrate of Bareilly and has been sentenced to six months' R. I. and a fine of Rs. 200/- under Sub-clause (a) and to six months' R. I. and a fine of Rs. 200/- under Sub-clause (f); the sentence of imprisonment being concurrent. His conviction and sentence was affirmed, in appeal, by the learned Sessions Judge, Bareilly.

2. It appears that on 28-9-1952, at about 6.45 a.m. the house occupied by the present applicant and his brother Jiwan and nephew, Kesari was searched by the Excise Inspectors, Sri M. L. Ehattacharya, and Sri Rampat Ram Srivastava accompanied by certain witnesses. . The applicant was in possession of the upper storey in the house and Jiwan and Kesari were living in the lower storey. On a search of the upper storey, which was in possession of the applicant, a brass vessel (Ex 3) containing illicit liquor and some apparatus for the distillation of illicit liquor consisting of a churra, a tasla and a Handi were recovered.

The illicit liquor in the brass vessel (Ex 3) was poured into eight bottles which were packed and sealed. Besides the above recovery, four bottles of illicit liquor are said to have been recovered from the lower storey which was in possession of Jiwan and Kesari. One out of these twelve bottles was sent to the Chemical Examiner for the examination of the contents but it is not clear whether this bottle was out of the eight bottles said to have been recovered from the possession of the applicant or out of four bottles which were recovered from the possession of the other two accused.

3. The accused denied the alleged recovery and pleaded that they had been falsely implicated.

4. The learned Magistrate after a consideration of the prosecution evidence was not satisfied that any illicit liquor was recovered from the possession of the accused Jiwan and Kesari. He, therefore, acquitted them. As regards the applicant he believed the prosecution evidence that the brass vessel (Ex 3) containing illicit liquor and the apparatus for distillation, specified above, were recovered from his possession. He, therefore, convicted and sentenced him, as above.

5. It has been contended on behalf of the applicant that there is no satisfactory evidence on the record that what was recovered from the possession of the applicant was illicit liquor. The only evidence on this point is of Sri Rampat Ram Srivastava, Excise-Inspector. It appears from his evidence that the content of the brass vessel (Ex. 3) which was recovered from the upper storey and which was in possession of the applicant, was transferred to eight bottles which were packed and

sealed in his presence and were later on sent, to Malkhana.

It does not appear from his evidence that he examined the contents of these bottles in order to find out whether it was illicit liquor or something else. It also does not appear from the record that anyone of these eight bottles was sent to the Chemical Examiner for examination and that the Chemical Examiner reported that it was illicit liquor. The question which arises for consideration is whether the evidence of Sri Rampat Ram Srivastava, that the contents of the brass vessel (Ex. 3) or of the eight bottles was illicit liquor, is legal evidence in order to prove this fact in absence of any examination of it by him.

There is no doubt that an Excise Inspector is an expert on the question whether a certain liquid is illicit liquor or not but before he is in a position to give such an opinion as an expert he has to examine it and has also to furnish the data on which his opinion is based. In the case of *Ramkaran Singh v. Emperor*, AIR 1935 Nag 13 (A), it was held that no doubt the Excise Inspector was an expert in his own department and was able to distinguish liquors but the court should under Section 51 ascertain the grounds on which his opinion was based so as to test it.

6. In this case the conviction was based on the bald statement of the Excise Inspector that the stuff which was recovered from the possession of the accused was illicit liquor but no data was furnished for this opinion. It was held that there was no adequate proof that the liquor was illicit and, in the circumstances, the conviction and sentence of the accused under the Excise Act was set aside.

7. Another case in which similar point arose is reported in *Mt. Titli v. Alfred Robert Jones*, AIR 1934 All 273 (B). It was held in this case that the opinion of an expert by itself may be relevant but would carry little weight with a court unless.

it was supported by a clear statement of what he noticed and on what he based his opinion. It was further held that the expert should, if he wanted his opinion to be accepted, put before the court all the materials which induced him to come to a conclusion so that the court although not expert might form its own judgment on those materials,

8. In view of the above decisions, I am of the opinion that the bald statement of the Excise Inspector, Sri Rampat Ram Srivastava, without examining the contents of Ex. 3 or the contents of the eight bottles alleged to have been recovered, from the possession of the applicant that it was illicit liquor, is not sufficient to prove that fact. 1 There is no other evidence to establish that the content of Ex. 3 was illicit liquor. In the circumstances, the conviction of the applicant under Section 60 (a) of the Excise Act cannot be sustained.

9. As regards the charge under Section 60 (f) of the Excise Act it has been contended that the evidence does not disclose that any of the three articles, namely, the cherua, tasla and Handi, were connected with distillation of illicit liquor and, in absence of such evidence, the mere recovery of these three articles would not lead to the conclusion that they were apparatus used in the distillation of illicit liquor. The evidence on the record does not disclose that any illicit liquor was found in any of these three articles when they were taken in custody.

These three articles are of such nature that they can be found in almost every house and they are necessarily not of such a nature that they could not be used for any purpose other than illicit distillation. In the circumstances, the mere recovery of these three articles by itself without any satisfactory evidence to connect them with the distillation of illicit liquor is not enough to establish the charge under Section 60 (f) of the Excise Act.

10. This revision is, therefore, allowed and the conviction and sentence of the applicant under Section 60 (a) and (f) are set aside. As the applicant is on bail, he need not surrender and his bail bonds are discharged. The fine, if paid, shall be refund ed.