

State vs Badruddin on 16 February, 1950

Equivalent citations: AIR1950ALL436, AIR 1950 ALLAHABAD 436

Author: Raghubar Dayal

Bench: Raghubar Dayal

ORDER

1. Badaruddin was convicted of offences Under Section 9 (a), Opium Act, and Under Section 60 (a), U. P. Excise Act. The conviction was upheld on appeal. He has come up to this Court in revision.
2. The facts found by the Court below are that on the search of his house at 7 P. M. on 24th July 1948, a seer of opium, three-quarter seer of Bhang, about half chantank of Ganja and about 31/4 bottle full of liquor were recovered by Shri R. S. Sharma, Deputy Superintendent of Police who conducted the search in the presence of Shri Usman Ali, Station Officer, Excise Inspector and a few other persons, who were not examined as witnesses.
3. The conviction Under Section 60 (a), U. P. Excise Act is bad as Under Section 70, U. P. Excise Act a Court cannot take cognizance of such an offence without the complaint or report of the Collector or an Excise Officer authorised by him in that behalf. This case was reported by the Station Officer and not by the Excise Officer, and therefore, the Magistrate could not have legally taken cognizance of the offence Under Section 60 (a), U. P. Excise Act.
4. The conviction for an offence Under Section 9 (a), Opium Act is challenged on the ground that Shri R. S. Sharma, Deputy Superintendent of Police conducted the search without a warrant at 7 P. M. in contravention of the provisions of Section 14, Opium Act, which authorises a search to be made between sunrise and sunset by certain officers without a warrant. It is, therefore, clear that the Deputy Superintendent of Police was acting illegally, but that fact alone will not vitiate the conviction, once it is proved that illicit opium was found in possession of the applicant. This fact together with the fact that no local witness was summoned for witnessing the search, as was required Under Section 103, Criminal P. C., will make the Court cautious and critical of the evidence led about the recovery of articles. Both the facts together will not vitiate the trial as illegal.
5. It is contended that non-official witnesses of the search, though summoned, were not examined and that the defence witnesses were not preferred to the prosecution witnesses about the search. The accused could have examined those search witnesses, who appeared in Court, and were not examined by the prosecution. The only inference that can be drawn against the prosecution on account of the omission of those witnesses is that they would have deposed against the prosecution. It will still be a matter for the Court to believe any set of witnesses. When the Courts below believed the prosecution witnesses, they committed no illegality or irregularity.

6. In view of the above, I do not consider the conviction of the applicant of an offence Under Section 9 (a), Opium Act to be illegal. The applicant has been sentenced to six months rigorous imprisonment and to a fine of Rs. 500/-. For this offence, I do not consider this sentence to be severe and do not consider the nature of the offence to justify giving the accused the benefit of the U. P. First Offenders' Probation Act.

7. I, therefore, allow the revision with respect to the applicant's conviction Under Section 60 (a), U. P. Excise Act, set aside the order of the Court below and acquit him of this offence.

8. I dismiss the revision against the applicant for an offence Under Section 9 (a), Opium Act and confirm the sentence passed for that offence.