

(1922) 02 AHC CK 0015
In the Allahabad High Court

Munshi Lal

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 03-02-1922

Acts Referred:

Uttar Pradesh Excise Act, 1910 — Section 60

Citation : AIR 1922 All 21 : 66 Ind. Cas. 184

Hon'ble Judges : Walsh, J

Bench : Single Bench

Judgement

1. This is an application in revision against a conviction u/s 60 of the U. P. Excise Act (IV of 1910). I might say at once that, in my opinion, (subject to such authorities as may have been decided to the contrary which are binding upon me in particular illustrations), as a general rule, a conviction under a Section, which provides a penalty for a variety of acts done in contravention of the Statute, is bad for duplicity where the section contains a variety of inconsistent alternatives. To take one simple example, in my opinion, to convict a man simply of an offence u/s 60 (a) would be bad for duplicity, because it might mean a conviction either for importing or for exporting, and it is impossible for a man to do both in the same act. Importing is defined by Section 3 of the Act as bringing into the United Provinces, and exporting is defined as taking out of the United Provinces, and it is a physical impossibility for anybody to do these two things by the same act. I say nothing to discourage the view that a person who exports from outside the United Provinces to a warehouse inside the United Provinces of which he is really the proprietor or temporary possessor, even under a false name, is, in fact, committing an offence under the Act of exporting into the United Provinces, although he is also the person who exported from outside. It is perfectly possible for me to send an article for myself from the High Court at Allahabad to my Chambers in London, and if I did so with a dutiable article without declaration, I should be guilty of importing into England. But it is necessary that the conviction should state the Act of which the accused is found guilty and the particular breach of the Act established against him by his Act so found. I, therefore, think

that the conviction by the Magistrate in the first Court was bad, on the fate of it.

2. To book liquor from Jaipur does not constitute an offence defined in any of the alternatives u/s 63, and the Magistrate has carefully avoided considering the alternative, which he thought was complied with, On this occasion I think the learned Sessions Judge has fallen, in substance, into the same trap. The sentence in which he upholds the conviction runs as follow:---"The contention that the offense was committed at Jaipur, if anywhere, is unsound, for the importation was made to Muttra." That is a contradiction in- terms. You cannot import to a place unless you are the person taking delivery inside the area in respect of which the word import is used. That is to say, to import to Muttra means that you are the person taking the goods in the United Provinces at Muttra or from some other place in the United Provinces to Muttra, Of course, a person who sends goods from a Native State is not doing anything of the kind. It matters nothing that the actual application before me is against the order of the learned Sessions Judge. It is quite clear that, on the facts found, he ought to have quashed the original conviction, but I, in order to make the matter clear beyond doubt, amend the application so as to include an application against the original conviction which I direct to be quashed. I order the recognizance of Munshi Lal to be discharged.