
(1956) 11 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Criminal Appeal No. 255 of 1956

The State	Vs	APPELLANT
Ram Singh		RESPONDENT

Date of Decision : 05-11-1956

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 221, 225, 342, 423, 439
Punjab Excise Act, 1914 — Section 25, 61(1)

Citation : AIR 1957 P&H 75 : (1957) CriLJ 473

Hon'ble Judges : Gurnam Singh, J;Falshaw, J

Bench : Division Bench

Advocate : K.S. Chawla, Asst. Advocate General, for the Appellant; B.S. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Falshaw, J.—Bam Singh respondent is alleged to have been stopped and searched by a Police patrol party near Mani Majra on the 12th of August 1955 and from his possession it is alleged that a bottle of liquor was recovered. The report of the Chemical Examiner is that the contents of this bottle, which held 26 ounces, were illicit liquor. The respondent was accordingly charged u/s 61(1)(a) of the Excise Act by a Magistrate at Kharar and convicted of an offence under that section, although his defence, supported by witnesses, was to the effect that no bottle of liquor or any other incriminating article was recovered from him.

He was sentenced to pay a fine of Rs. 50/- or in default two months" rigorous imprisonment and also ordered to furnish, a bond u/s 69A of the Excise Act for six months in a sum of Rs. 500/-. He was, however, acquitted by the learned Sessions Judge at Ambala in appeal and the State has filed the present appeal against his acquittal.

2. The order of the learned Sessions Judge acquitting the respondent is not at all easy to understand, but what its purport seems to amount to is that a charge u/s 61(1)(a) of the Excise Act of this nature is too vague for any accused person to

be able to answer. This is a view which I cannot understand, since the provisions of Chapter IV of the Punjab Excise Act make it quite clear under what conditions intoxicating liquor, which means any liquor containing alcohol, can be manufactured, sold and possessed, and Section 25 provides that no person shall have in his possession any quantity of any intoxicant knowing the same to have been unlawfully imported, transported, manufactured, cultivated or collected, Or knowing the prescribed duty not to have been paid thereon, and, with due respect to the views of the learned Sessions Judge, I do not believe that there is a single villager in this region who is not aware of the difference between illicit and licit liquor.

3. Apart, however, from attempting to support the views expressed by the learned Sessions Judge, the learned counsel for the respondent has also raised the point that neither the charge nor the interrogation of the accused u/s 342, Cr P. C. conform with the requirements of law. The offence punishable u/s 61 (1) (a) of the Act clearly relates back to the provisions of Section 25 and therefore, for anybody to be convicted u/s 61(1)(a) for the possession of illicit liquor, there must be two ingredients, namely the possession of illicit liquor and the knowledge that for one of the reasons mentioned in Section 25 the liquor is illicit.

However, neither in the Questions put to the accused u/s 342. Cr. P. C. nor in the charge was there any mention of the words "knowing the liquor to be illicit." The accused was in fact simply asked whether he was in possession of the bottle containing illicit liquor, and he was simply charged with being in possession of 26 ounces of illicit liquor.

4. I am certainly in agreement with the learned counsel for the respondent that both in the questions put to the accused and in the charge the element of guilty knowledge mentioned in Section 25 should also be mentioned. If this point had been raised in appeal or revision against a conviction, it would be necessary to see whether any prejudice has been caused to the accused by the failure to include these words in the questions and charge, and in cases where the defence taken was a total denial of possession of any Incriminating article, I should be inclined to hold that no prejudice had been created against the accused by the omission of these words, and should therefore not be inclined to set aside the conviction simply on this account or if I did so, in a suitable case, I might order a retrial. Although the same principle might be applied in an appeal filed by the State against an acquittal, I do not think that the present case is of a sufficiently serious nature to justify the ordering of retrial, and I consider that it will serve the purpose of the State in instituting this appeal sufficiently if we merely correct the erroneous views of the learned Sessions Judge. With these remarks I would dismiss the appeal.

Gurnam Singh, J

5. I agree.