
(1904) 04 CAL CK 0007
In the Calcutta High Court
Case No : Rev. No. 294 of 1904

Toolsey Kaharin

APPELLANT

Vs

The Emperor

RESPONDENT

Date of Decision : 13-04-1904

Acts Referred:

Citation : (1904) 04 CAL CK 0007

Judgement

1. The Chief Presidency Magistrate of Calcutta has convicted the Petitioner under secs. 61 and 74 of Act VII of 1878 B. C., and sentenced her to six weeks" rigorous imprisonment. Under sec. 61 of that Act "Any person, other than licensed manufacturers or vendor, or a person duly authorised to supply licensed vendors, having in his possession any greater quantity of any excisable article or any preparation or admixture of the same than the quantity specified for each article under sec. 15, without a pass from the Collector or other officer duly empowered on that behalf, shall be liable to a fine not exceeding Rs. 500." This rule was obtained culling upon the Chief Presidency Magistrate to show Cause why the conviction of and sentence passed upon the Petitioner should not be set aside on the ground that the judgment is defective in so far as it does not give either the substance, or a summary of the evidence so as to enable this Court to form an opinion as to the correctness of the finding arrived at, and also on the ground that there is nothing on the record to show that the Petitioner has been convicted before.

2. The judgment of the Chief Presidency Magistrate is extremely meagre. It does not give sufficiently the reasons so as to indicate what the materials were before the learned Magistrate on which the conviction is based.

3. The Chief Presidency Magistrate in his explanation apparently supports his judgment by a reference to sec. 370, Cr. P. C., in which it is permitted to a Presidency Magistrate, instead of recording a judgment, to record merely the particulars mentioned in that section. But it has been held in this Court that although the law says the Magistrate should record merely the reasons for his

conviction, instead of recording a judgment, this must be done in such a manner that the High Court in revision may be in a position to judge whether there were sufficient materials before him to support the conviction. In the record before us we do not find a summary of the evidence, or such a statement of the facts as would enable us to say whether the materials were sufficient to support the conviction. There is also nothing to show that the Petitioner had been convicted before under this particular Act for a similar offence. The learned Magistrate refers to copies of the previous convictions. In our opinion, however, the reasons for the conviction ought to show the previous convictions in order to justify the punishment which he has imposed.

4. The rule is made absolute and the conviction and sentence set aside. The Petitioner will now be discharged.