

State Vs Tillu

Government Criminal Appeal No"s. 1042 with 1043 and 1059 of 1954

Court: Allahabad High Court

Date of Decision: March 27, 1957

Acts Referred:

Uttar Pradesh Excise Act, 1910 – Section 10, 3(2), 50, 60, 70(1)

Citation: AIR 1957 All 654

Hon'ble Judges: Sahai, J; Roy, J

Bench: Division Bench

Advocate: Shri Rama, for the Appellant; S.B.L. Gaur, for the Respondent

Final Decision: Allowed

Judgement

Roy, J.

These are three appeals by the State against Tillu, Munshi Ram and Jaswant Rai respectively in which a common question of law arises. Counsel have been heard and these three appeals may, therefore, be disposed of by a common judgment. Criminal Appeal No. 1042 of

1954 is against Tillu, who was prosecuted for an offence u/s 60 (a), U. P. Excise Act. Criminal Appeal No. 1043 of 1954 is against Munshi Ram,

who was prosecuted, u/s 60 (f), U. P. Excise Act. And Criminal Appeal No. 1059 of 1954 is against Jaswant Rai, who was prosecuted u/s 60

(a), U. P. Excise Act.

In all the three cases, which were tried separately by the same Magistrate, the Magistrate was of the view that he could not take cognizance of the

offence punishable u/s 60 in view of the provisions of Section 70, U. P. Excise Act, because the complaint or the report had been made by the

Station officer of the police station who was not an "excise officer" within the meaning of the term u/s 70 of the Act.

2. The point is covered by two clear decisions of two Division Benches of this Court and also by a number of Single Judge decisions. But the case

which appears to have been cited before the learned Magistrate upon which he relied in support of his view was a single Judge decision of this

Court In State Vs. Badruddin, . This decision has been dissented from in the later decisions of this Court.

3. Section 70, U. P. Excise Act, which deals with cognizance of offences within the purview of the Act runs as follows:

70. (1) ""No Magistrate shall take cognizance of an offence punishable-

(a) u/s 60, Section 63 or Section 65, except on his own knowledge or suspicion or on the complaint or report of an excise officer.

In the present cases the Magistrate took cognizance on the report of the, station officer of the police station unless, therefore, the report of the

station officer of the police station can be, using the term literally, ejusdem generis with the report of an excise officer, assumption of jurisdiction by

the trying Magistrate would be a nullity.

4. Section 3 (2), U. P. Excise Act (No. IV of 1910), defines an ""excise officer"" as meaning a Collector or any officer or person appointed or

invested with powers u/s 10. In other words, even though one may be a police officer by appointment, one may, for certain purposes, be clothed

with the office of an excise officer provided that one is invested by the Local Government or the State Government, by notification with one or

more of the powers u/s 10 of the Act.

And if a police officer is so invested with powers, irrespective of the purpose for which the powers may have been conferred upon him, he comes

under the definition of an excise officer and therefore becomes entitled to make a complaint or report on which a Magistrate can take cognizance

of the offences mentioned in Section 70 (1) (a) of the Act.

A reference to Rule 48 of Part II of Vol. I of the U. P. Excise Manual shows that the Local Government has by various notifications conferred

powers of entry and inspection of places of manufacture and sale etc., u/s 48 of the Act on, among others, police officers not below the rank of an

officer in charge of a police station, and powers of arrest, seizure and detention u/s 50 of the Act on all police officers, including the provincial

chaukidari force, town, village and road chaukidars, in respect of offences punishable u/s 60 (a), (g) or (j), and on all police officers in charge of

stations and police officers of, or above, the rank of Sub-Inspector in respect of offences punishable u/s 60 (b), (c), (d), (f) or (i), or under

Sections 62 or 63.

That being so, while the various police officers have been invested respectively with certain specified powers, all of them from the chaukidar

upwards, fall, by virtue of that investment, within the definition of an ""excise officer"" in Section 3 (2) of the Act. It follows, therefore, that all police

officers, from chaukidar upwards, are competent as excise officers to make a complaint or report in respect of offences, mentioned in Section 70

(1) (a) of the Act and the proper Magistrate will have jurisdiction to take cognizance of those offences on such a report.

5. It has been urged by learned counsel for the respondents that neither of the Sections 48 and 50 under which powers have been conferred on

police officers by the Local Government, authorises a police officer to make a complaint or report, and, therefore, a police officer has no authority

to make a complaint or report u/s 70 (1) (a).

This argument would be permissible only if the words ""excise officer"" occurring in Section 70 (1) (a) were qualified by some such words as

authorised to make complaint or report"". No such qualifying words, however, occur there. That being so, and the language of the provisions itself

being quite unambiguous, it will not be permissible to read into the context words which are-not to be found there.

That a specific authority to make a complaint or report is not necessary in respect of the offences enumerated in Clause (a) of Sub-section (1) of

Section 70 is further borne out by a comparison of its language with the language of Clause (b). Clause (b) speaks of ""an excise officer authorised

by him (the Collector) in that behalf"", but clause (a) speaks only of an ""excise Officer."" This marked difference in the language of the two clauses in

the same sub-section would seem to show that the Legislature did not intend the excise officer to be specially authorised to make a complaint or

report in respect of the offences enumerated in Clause (a) of Sub-section (1), Section 70 of the Act.

6. It follows, therefore, that a Magistrate is competent to take cognizance of offences under Clause (a) of Sub-section (1) of Section 70 of the Act

on the complaint or report of a police officer, who under a notification by the State Government under the Act will be an ""excise officer"" within the

meaning or that term under the Act. There is such a notification No. 576 of 13-7-1910, by the State Government which authorised all police

officers in charge of stations, among other persons, investing them with the powers specified in Section 50 of the Act in respect of offences

punishable u/s 60, Clauses (b), (c), (d), (f) and (i).

There can be no doubt that u/s 10 of the Excise Act the Local Government has authority to empower not only a Sub-Inspector of Police but any

police officer to perform the duties and exercise powers under that Act including the conferment of authority to make a report or complaint. The

Local Government had, in express terms, authorised any police officer to arrest and to make searches in connection with a number of offences

including an offence of being in illicit possession of intoxicant liquor.

The station officer had authority to arrest a person who was in possession of it and to search his shop or house and was moreover also required by

law to produce him before the competent Magistrate within twentyfour hours of his arrest. If It can be said that he was not authorised to report the

facts to the Magistrate so as to give that Magistrate authority, to take cognizance of the alleged offence, it would create a very anomalous situation

and, therefore, in the earliest case that has been decided by a learned Single Judge of this Court in *Prag v. Emperor*, 30 Ind Cas 143: AIR 1915

All 456 (1) (B), it was held that a police officer in charge of a police station was an ""excise officer"" within the meaning of that term under the U. P.

Excise Act and he had the authority to make a complaint or a report so as to give the Magistrate the authority to take cognizance of the offence u/s

70 (1) (a).

7. The matter was decided by this Court in similar strain by a number of other decisions and they are as follows :

1. Emperor Vs. Chitar Singh, , by a Division Bench consisting of Mears C. J. and Piggott J.

2. Chhedi Lal Vs. Emperor, , by Bajpai, J.

3. Azim Ullah Vs. State, , by Desai, J

4. Chungur Vs. The State, by Kidwai, J.

5. Kuber Kalwar v. State, Cri. Revn. No. 1012 of 1951, decided by Brij Mohan Lall, J. on 30-7-1952. (G).

6. Thagga v. State, Cri. Revn. No. 966 of 1953, decided by V. Bhargava, J. on 28-5-1953 (H).

7. Prem Shankar Vs. State, , decided by Desai, J.

8. State v. Bhagwan Din, Govt. Appeal No. 31 of 1952 decided by Desai & Chowdhry, JJ. on 18-1-1955 (J).

8. There is, therefore, a considerable volume of decision of this Court which supports the contention that the complaint or report in the present

case by the Station Officer was a proper complaint or report of an ""excise officer"" within the meaning of Section 70 (1) (a) of the U. P. Excise

Act so as to enable the Magistrate to take cognizance of the offence punishable u/s 60 of the Act.

9. There is another decision of the Oudh Chief Court in Emperor v. Chunni ILR 6 Luck 646: AIR 1931 Oudh 395 (K), in which a Division Bench

of that Court took a similar view. In another Cri. Revn. No. 708 of 1951 of this Court decided on 31-3-1955 (L), in which one of us was a party,

the same view was taken by one Judge. But a contrary view was taken by another learned Judge, although upon the interpretation of Section 20 of

the Police Act the ultimate decision of the case was the same.

There are, however, two decisions of this Court by two learned Single Judges; the one is the case of State Vs. Badruddin, , relied upon by the

Magistrate and the other is the case of Baij Nath and Another Vs. State, , decided by Mulla J. In Badruddin v. State (A), Dayal, J. without

referring to any previous decisions of this Court and without taking into consideration the notification aforesaid, which does not appear to have

been laid before him when the matter was heard, came to the conclusion that a Magistrate cannot take cognizance of an offence u/s 60 (a) of the

U. P. Excise Act when the case was reported by the Station Officer, because such an officer cannot be deemed to be an excise officer authorised

in that behalf u/s 70 of the Act.

This view was dissented from by Desai J. in Azim Ullah Vs. State, as also by Kidwai J., in Chungur Vs. The State, and by Desai and Chowdhry

JJ. in Govt. Appeal No. 31 of 1952 (J), referred to above. As the decisions of this Court were not brought to the notice of Dayal J., in Baij Nath

and Another Vs. State, , Mullah J., preferred to rely upon the decision of Dayal J. in Badruddin v. State (A), as also upon the dissenting judgment

of Asthana J., on this point in Cri. Revn. No. 708 of 1951 (All) (L), mentioned above, Mullah J., also disapproved of the view taken in 21 All LJ

922: Emperor Vs. Chitar Singh, , in which, as we have already said, a Division Bench of this Court consisting of Mears C. J. and Piggott J., took

the view that a Sub-Inspector of Police invested with powers u/s 10 of the Excise Act is an ""excise officer"" u/s 3 (2) of that Act and a complaint or

report made by him to a Magistrate would be a proper complaint which would give the Magistrate the power to take cognizance of the offence

within the meaning of Section 70 (1) (a). In Emperor Vs. Chitar Singh, , Mears C. J. and Piggott J. observed as follows:

There can be no doubt that u/s 10 of the Excise Act the Local Government had authority to empower, not only a Sub-Inspector of Police but any

police officer to perform duties and exercise powers under that Act, including the conferment to make a report or complaint. Now the Local

Government has in express terms authorised any police officer to arrest and to make searches in connection with a number of offences including

the offence of being in illicit possession of intoxicating liquor of which Chitar Singh has been convicted.

It would certainly be anomalous if the Sub-Inspector had authority to arrest Chittar Singh and to search his shop and was moreover required by

law to produce Chitar Singh before a competent Magistrate within 24 hours of his arrest but could not by reporting the facts to the Magistrate give

that Magistrate authority to take cognizance of the alleged offence.

We think that this anomaly has been avoided by the very wide definition of the words ""Excise Officer"" contained in Sub-clause (2) of Section 3 of

the Excise Act. According to that definition an ""Excise Officer"" means not merely a Collector or other officer appointed as such, but also an officer

or person invested with powers under the Act by a Government order lawfully issued under the provisions of Section 10.

The Sub-Inspector as a police officer has been invested with powers under that section. This is sufficient to constitute an Excise Officer within the

meaning of the definition, wherever the words ""Excise Officer"" occur in the Act. It was, therefore, unnecessary, and would have complicated

matters, for the Local Government to issue a further notification authorising persons whom it had already conferred powers for the purposes of the

Act to do something which the Act says any ""Excise Officer may do"".

10. In dealing with the last sentence of the passage quoted above, namely. ""It was therefore, unnecessary and would have complicated matters, for

the Local Government to issue a further notification authorising persons on whom it had already conferred powers for the purposes of the Act to

do something which the Act, says any ""Excise Officer may do"" Mulla J., in Baij Nath and Another Vs. State, , observed :

That is to say it was unnecessary to issue a separate notification authorising him to submit a report or complaint to the Magistrate. With respect to

the learned Judge who gave this decision I am unable to agree with him. The words of Section 10 (2) (e) of the U. P. Excise Act under which

these notifications were issued clearly show that "all or any of powers and duties assigned to an officer of the Excise Department" may be

conferred.

In other words the empowering section itself made provisions for restricted powers being conferred on those persons who were made Excise

Officers under the notification. In my opinion it is not, therefore, open to contend that the Excise Officers created by these notifications could

exercise all the powers of an excise officer even though they were not given to them by these notifications.

With all respect to the learned Single Judge we do not agree with him. A Division Bench of this Court in Ganga Sahai Vs. Bharat Bhan and Others,

, consisting of Mootham J., (as he then was) and Sapru, J. held that the decision of a Bench of the Court is binding on another Bench of co-

ordinate jurisdiction, Mootham J. with whom Sapru J., agreed expressed himself in no uncertain terms as follows :

In my opinion that decision is binding on this Court, and I desire to record my emphatic dissent from the view that one Division Bench of this

Court is entitled to embody in a judgment a conclusion which is contrary to that of another Bench of co-ordinate jurisdiction.

We are of the opinion that we are bound by the decision of the Division Bench in 21 All LJ 922: Emperor Vs. Chitar Singh, and by the other

decision of the Division Bench in Govt. Appeal No. 31 of 1952 (All) (J) decided by Desai and Chowdhry JJ., on the 18th of January 1955 and

we would hold that the Magistrate in these cases could legally take cognizance of the offences under Clauses (a) and (f) of Section 60 of the

Excise Act.

11. Accordingly we allow the three appeals, set aside the orders passed by the learned Magistrate and direct that all the three cases should be sent

down to the Court concerned for disposal on merits and in accordance with law.