
(1890) 03 CAL CK 0002

Calcutta High Court

Case No: None

Queen-Empress

APPELLANT

Vs

Harridas San

RESPONDENT

Date of Decision: March 17, 1890

Citation: (1890) ILR (Cal) 567

Hon'ble Judges: Norris, J; Macpherson, J

Bench: Division Bench

Judgement

@JUDGMENTTAG-ORDER

Norris and Macpherson, JJ.

This case comes before us on a reference from the Sessions Judge of Birbhoom; the facts are as follows:

Bama Charan Saha is a licensed retail vendor of spirituous and fermented liquors under Bengal Act VII of 1878, and under the terms of his license he is not allowed to sell a larger quantity of pachwai than four seers. The accused Harridas San is a servant in the employ of Bama Charan Saha. Sriram Jugi went to the shop of Bama Charan and purchased 7 1/4 kutcha (5 seers purxa) of undiluted pachwai. The pachwai was handed to Sriram Jugi by the accused in the presence of his employer and at his (the employer's) request.

The police regarding the accused as a partner with Bama Charan reported him (accused) for prosecution for sale of a quantity of pachwai in excess of that permitted to be sold under Bama Charan's license, an offence punishable u/s 60 of the Act, which says, inter alia, that "every licensed retail vendor who sells by wholesale shall be liable for every such offence to a fine not exceeding two hundred rupees.

2. The accused was summoned not u/s 60, but u/s 59, which enacts that "every manufacturer or vendor under this Act who fails to produce his license on the

demand of any Excise Officer, or who commits any act in breach of any of the conditions of his license not otherwise provided for in this Act, or who artfully contravenes any rule made by the Board u/s 10, otherwise than as provided in the last preceding section, shall be liable for every such offence to a fine not exceeding fifty rupees."

3. The Joint-Magistrate convicted the accused u/s 53 of the Act, for selling exciseable liquor without a license.

4. The Judgment is as follows:

The evidence of the witnesses for the prosecution proves that the accused sold more than 4 seers of undiluted pachwai to Sriram Jugi, who had no license to purchase such a large quantity of pachwai. The accused himself holds no license. His statement is that he sold as servant of Bama Charan. But the pottah of Bama Charan has not been produced. It is not in evidence that the name of the accused is endorsed on the pottah authorising him to sell pachwai as a servant under him. I therefore find that he sold pachwai without a license. I convict him u/s 53, Act VII of 1878, and sentence him to pay a fine of Rs. 15, in default to undergo simple imprisonment for two weeks.

5. We are of opinion that the conviction cannot stand.

6. No doubt there are cases which say that the servants of licensees are not as such exempt from responsibility under the Bengal Excise Act.

7. In *In re Ishur Chunder Saha* 19 W.R. Cr. 34, Couch, C.J., says:

But there is another reason why it (the conviction) ought not to be interfered with. Supposing there is an error here in the Magistrate's holding that this must be considered as his license, and that he was practically the vendor, there is no doubt that; he did sell the liquor; if this was not his license, he has been guilty of a breach of the law in selling liquor without any license.

8. In *Empress v. Baney Madhub Shaw* ILR Cal 207 : 10 CLR 389 the petitioner, the servant of a licensed vendor of spirits, was convicted for selling a bottle of brandy which was carried off and not drunk on the premises. It was contended for the petitioner that the master, the licensed vendor, was alone liable. Prinsep, J., in giving judgment, says: "Two judgments of this Court have been considered by us on this point: *In re Ishur Chunder Saha* 16 W.R. Cr. 34 and the other recently delivered by Mr. Justice Pontifex and Mr. Justice Field, *The Empress v. Nuddiar Chand Shaw* ILR Cal 832 : 8 CLR 162 These decisions are in conflict Our opinion inclines to the decision in *re Ishur Chunder Saha*; and having regard to the fact that that decision was not brought to the notice of the Judges who decided the more recent case, we think we are justified in following it."

9. The case of the Empress v. Ishan Chundra De ILR Cal 847 : 12 CLR 451 followed the decisions in In re Ishur Chunder Saha 19 W.R. Cr. 34 and Empress v. Baney Madhub Shaw ILR 8 Cal 207 : 10 CLR 389 In the Empress v. Nuddiar Chand Shaw ILR Cal 832 : 8 CLR 162 Pontifex and Field, JJ., held that the licensed retail vendor himself is the only person liable to conviction u/s 60 of the Act.

10. In our opinion it is unnecessary to express any opinion as to which of these decisions is correct. The facts proved in this case do not establish a sale by the accused. The master was present in the shop at the time the order was given by the purchaser, and directed the accused to give the article ordered to the purchaser. The more mechanical act of handing the liquor to the purchaser cannot, under the circumstances, be regarded as a sale by the accused.