

(1881) 01 CAL CK 0016

Calcutta High Court

Case No: None

Ram Chunder Shaw
and Others

APPELLANT

Vs

The Empress

RESPONDENT

Date of Decision: Jan. 5, 1881

Acts Referred:

- Bengal Excise Act, 1909 - Section 58, 74
- Presidency Magistrates (Court- Fees) Act, 1877 - Section 170, 181

Citation: (1881) ILR (Cal) 575

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Prinsep, J.

The three appellants before us, as well as two others, have been convicted and sentenced u/s 58 of the Beng. Excise Act (Beng. Act VII of 1878), and in addition to the penalty prescribed thereby, they have, u/s 74, been sentenced to imprisonment, in consequence of their having been previously convicted of an offence under the Act punishable with a fine of Rs. 200 or upwards.

2. The Presidency Magistrate has recorded on the proceedings of the trial that he has "not the least doubt that the defendants (with the exception of Husnoo, who has been discharged) did introduce spirituous liquors without a pass, and have committed an offence u/s 58 of the Excise Act."

3. To constitute an offence under the latter part of Section 58, it is necessary that the offender should have introduced, or attempted to introduce, for sale, spirituous liquors manufactured at another place into the limits fixed for the consumption of such liquors manufactured at such distillery (i.e., a distillery, established u/s 9) without a special pass from the Collector.

4. In the present case, we find that there is some evidence which apparently the Magistrate has believed to show that the liquor seized in Calcutta had been manufactured in Tallygunge, a suburb. Under the circumstances it is not necessary for us to express any opinion on the value of that evidence. But Mr. R. Allen for the appellant has maintained, and the Standing Counsel for Government, who appeared to support the conviction, has ultimately admitted, that the Collector of Calcutta, up to the present time, has not, u/s 9, fixed limits with regard to any distillery in Calcutta within which no spirituous liquor manufactured after native processes except in that particular distillery shall be introduced or sold without a special pass. There cannot, therefore, be the special protection necessary to constitute an offence u/s 58, and the conviction and sentences passed on the appellants must accordingly be set aside.

5. Two other persons have been convicted simultaneously with the appellants, who have not been able to appeal, their sentences not being appealable. We have already held that no offence has been committed, and we therefore feel bound to deal with their cases u/s 147 of the High Courts' Criminal Procedure Act. The Standing Counsel, on behalf of Government, consents to our proceeding summarily with this matter without complying with the special procedure provided by Section 181 of the Presidency Magistrates' Act, and as this would necessitate a mere compliance with form without any possible advantage, we direct that the conviction and sentences passed on these two men, Obinash Chunder Shaw and Baneshur Shaw, be set aside. The fines, if paid, will be refunded ; and the appellants will be released from jail.

6. It is right that we should notice two objections taken in this appeal to the legality of the sentences passed. Mr. Allen first contended that, in order to render an offender under the Beng. Excise Act liable to additional punishment u/s 74, it is necessary that he should have been previously convicted of the same offence, the words like offence being synonymous with same offence. It appears to us, however, that the section contemplates merely that the offender having been already convicted of an offence punishable with fines of 200 or upwards should be again convicted of another offence punishable with the same punishment, and that this is the correct interpretation to be put on the term like offence. The additional sentence of imprisonment passed u/s 74 would not be illegal if, in the case now before us, an offence had been established u/s 58.

7. The other objection is, that the alternative sentence of imprisonment-viz., three months' rigorous imprisonment in default of payment of the fine imposed-is beyond what the Magistrate can inflict u/s 12 of the Presidency Magistrates' Act (IV of 1877). Mr. Allen contends that, as u/s 74 of the Beng. Excise Act, the appellants were liable to imprisonment for a term not exceeding six months, the Magistrate, u/s 12 of the Presidency Magistrates' Act, could not sentence them to undergo imprisonment for more than six weeks-i.e., one-fourth of six months, on default of

payment of the fine imposed.

8. It appears to us, however, that the appellants have been sentenced practically to two sentences-one u/s 58 to fine of "rupees one hundred each, in default to undergo three months" rigorous imprisonment each ;" and the other u/s 74, in addition to the penalty u/s 58, to imprisonment each for six months. The imposition of the additional sentence would not affect the Magistrate's powers as regards the original sentence u/s 58. It cannot be denied that, standing by itself, the sentence u/s 58 is perfectly legal ; but it is contended that, by reason of the additional sentence of imprisonment u/s 74, the term of imprisonment in default of payment of the fine imposed u/s 58 is excessive, and therefore illegal. We see no valid reason for this contention, and indeed it would be an anomaly if a sentence perfectly legal u/s 58 should become otherwise, because the offender had rendered himself liable to an additional punishment on account of a previous conviction under the Beng. Excise Act.

9. We observe that this case was heard by the Magistrate on the 6th, 9th, and 16th November, though it was of a nature which should ordinarily have permitted of its decision at the first hearing. No reason is assigned for the postponements, if it existed, or that they were owing to the absence of the necessary evidence for the prosecution. We think it necessary to notice this, because frequent postponements add considerably to the expense incurred by the parties, and should be avoided.

10. We observe also that, in the affidavit it is stated on behalf of appellants that "application was made to the Magistrate for copies of the evidence in this case, but the same was refused," notwithstanding the terms of Section 170 of the Presidency Magistrates' Act.