the functions of the Competent Authority or to embark on an enquiry which the Legislature says shall be made by executive officers alone.

The State of Punjab, etc. v. S. Harbhajan Singh

Bhandari, C. J.

For these reasons I would allow the appeal, set aside the order of the District Magistrate dated the 12th August, 1952 and direct the said officer to make such order as he may consider necessary after holding an enquiry as to whether the house in question was being bona fide used by the owner as the residence of himself or his family on the 17th July, 1952 when the notice under section 3 of the Act of 1948 was issued to him. The District Magistrate will, doubtless, afford the respondent a reasonable opportunity of being heard before any final decision is taken. There will be no order as to costs.

BISHAN NARAIN, J.—I agree.

Bishan Narain, J.

APPELLATE CRIMINAL

Before Falshaw and Gurnam Singh, JJ.

THE STATE,—*Appellant*

versus

RAM SINGH,—*Respondent*

Criminal Appeal No. 255 of 1956.

1956

Nov., 5th

Punjab Excise Act (I of 1914)—Sections 25 and 61(1)(a)—Offence under—Ingredients of—Code of Criminal Procedure (Act V of 1898)—Section 342—Questions asked under and charge framed not referring to guilty knowledge mentioned in section 25 of Punjab Excise Act—Effect of.

Held, that the offence punishable under section 61 (1) (a) of the Act clearly relates back to the provisions of section 25 and, therefore, for anybody to be convicted under section 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.

Held further, 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 and if it is not mentioned, it should be seen whether the failure to mention it has caused any prejudice to the accused before setting aside his conviction or ordering a retrial in suitable cases.

Appeal from the order of Shri I. M. Lall, Sessions Judge, Ambala, dated the 7th March, 1956, reversing that of Shri K. R. Kalia, Magistrate, 1st Class, Kharar, dated the 30th December, 1955, acquitting the respondent.

K. S. CHAWLA, Assistant Advocate-General, for Appellant.

B. S. CHAWLA, for Respondent.

JUDGMENT.

Falshaw, J.

FALSHAW, J.—Ram 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 under section 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 under section 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.

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 under section 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.

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 under section 342, Criminal Procedure Code conform with the requirements of law. The offence punishable under section 61(1)(a) of the Act clearly relates back to the provisions of section 25 and, therefore, for anybody to be convicted under section 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 under section 342, Criminal Procedure Code, 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

The State v. Ram Singh

Falshaw, J.

charged with being in possession of 26 ounces of illicit liquor.

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.

GURNAM SINGH,—I agree.

APPELLATE CIVIL

Before Bishan Narain and Chopra, JJ.

MEHTAB SINGH,—*Plaintiff-Appellant*

versus

AMRIK SINGH AND OTHERS,—*Defendants-Respondents*

Regular Second Appeal No. 345 of 1950.

1956

Nov., 6th

Indian Evidence Act (I of 1872)—Section 90—Will—More than 30 years old—Production of certified copy—Whether can justify the presumption of due execution of the original will—Formalities laid down in section 50 of the Indian Succession Act (XXI of 1865) or section 63 of the