

## CRIMINAL REVISION.

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*Before Bartley and Henderson J.J.*

BANA MALI BHATTACHARJYA

v.

EMPEROR.\*

1938

Aug. 24.

*Search—Irregularity in search, Effect of—Admissibility—Evidence relating to an irregular search, Admissibility of:*

The failure to comply with the provisions regulating searches may cast doubt upon the *bona fides* of the officers conducting the search. There is, however, nothing in the law which makes evidence relating to an irregular search inadmissible and a conviction based on such evidence is not invalid on that ground alone.

### CRIMINAL REVISION.

The facts of the case were that on January 25, 1938, the house of the accused was searched and six ounces of illicitly distilled liquor contained in a bottle and certain articles alleged to be used for the manufacture of liquor were seized. The two witnesses for the search did not belong to the locality, but the prosecution contended that the local people were unwilling to be search witnesses. The defence did not deny the recovery of the bottle from the house, but the case put forward was that it contained medicine for beri-beri. The accused was put upon his trial under cls. (a) and (f) of s. 46 of the Excise Act. He was acquitted under cl. (f) but was convicted under cl. (a) for the possession of the liquor. An appeal to the District Magistrate from the said conviction was dismissed whereupon the accused obtained the present Rule.

*Sudhangsu Sekhar Mukherji and Parimal Mukherji with them Lalit Mohan Sanyal for the petitioner.*

\*Criminal Revision, No. 603 of 1938, against the order of B. B. Sarkar, Additional District Magistrate of 24-Parganās, dated May 11, 1938, affirming the order of K. Haider and Chas. Griffiths, Honorary Magistrates at Sealdah, dated April 12, 1938.

*The Officiating Deputy Legal Remembrancer,  
Debendra Narayan Bhattacharjya, for the Crown.*

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BARTLEY J. The ground on which this Rule was issued was that the search was not conducted in accordance with law inasmuch as the search witnesses do not come from the same locality, and therefore the conviction and sentence cannot be sustained. The conviction was under the Excise Act, and the offence charged was being in possession of illicitly distilled liquor.

In the first place, there is nothing in the record to establish the point that the witnesses do not come from the same locality.

In the second place, even if they did not, we are unable to see how that fact by itself would entitle the petitioner to an acquittal. Conviction or acquittal depends upon the credibility of the witnesses as assessed by the Court and not on the question whether their presence on the scene of the alleged offence was in accordance with a particular legal procedure.

This Rule must, accordingly, be discharged. The petitioner must surrender to his bail and serve out the remainder of his sentence.

HENDERSON J. I agree. In my opinion the ground on which this Rule was obtained is fallacious. The failure to comply with the provisions regulating searches may cast doubt upon the *bona fides* of the officers conducting the search. But when once the evidence has been believed it is obviously no defence to say that the evidence was obtained in an irregular manner. There is nothing in the law which makes such evidence inadmissible.

*Rule discharged.*