

REVISIONAL CRIMINAL.

1918
April, 15.*Before Justice Sir Pramada Charan Banerji.*EMPEROR *v.* RAM DAS AND OTHERS.*

*Acts (Local) No IV of 1910 (United Provinces Excise Act), section 64(c)—
Breach of conditions of licence—Breach committed by servant—Responsibility of master.*

In order to establish an offence under section 64(c) of the United Provinces Excise Act, 1910, against a licence-holder in respect of the alleged keeping of incorrect accounts by a servant, it must be shown that the licence-holder himself allowed the offence to be committed by his servant, or was cognizant of what his servant was doing.

Two holders of a licence for the sale of liquor and their salesman were convicted of an offence under section 64(c) of the United Provinces Excise Act, 1910, for a breach of one of the conditions of the licence, namely, that an account of sales made should be kept in a prescribed form. It was alleged that the accounts, which were actually kept by the third accused, the salesman, were not correct. The case was referred to the High Court by the Sessions Judge of Cawnpore with the recommendation that the convictions and sentences should be set aside, inasmuch as the use of the word "wilfully" in section 64 implied that, if the breach were committed by a servant, the master must be in some way privy to or cognizant of it before he could be convicted. The learned Sessions Judge was also of opinion that the conviction of the salesman could not stand, because he had kept accounts of some sort, though they might not have been strictly accurate accounts.

The parties were not represented.

BANERJI, J.—The three accused in this case have been convicted under section 64 (c) of the United Provinces Excise Act, No. IV of 1910. The first two accused are the holders of a licence for the sale of liquor. The third accused Kallu is their salesman. One of the conditions of the licence was that an account of sales made shall be kept in a prescribed form. The charge against the accused was that they had not kept correct accounts and that they had thus committed a breach of condition 9 of the licence. Section 64 provides that "Whoever being the holder of a licence or being in the employment of such holder

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and acting on his behalf, *wilfully does* or omits to do anything in breach of any of the conditions of the licence, shall be punished for each such offence with fine." As regards the first two accused they would be guilty under the section if they wilfully did or omitted to do anything in breach of any of the conditions of their licence. The use of the word "wilfully" clearly shows that it must be shown that they themselves allowed the breach to be committed by their servant or were cognizant of what their servant was doing. The learned Sessions Judge therefore was, in my opinion, right in the view that these men could not be legally convicted under the section. The Magistrate who convicted them referred to the case of *Emperor v. Babu Lal* (1). That was a case under the Opium Act, the provisions of which were different from those of the Act in question in the present case. Reference was made in that judgment to the unreported case of *Queen-Empress v. Ram Kishen* (2), decided on the 26th of February, 1890. That was a case under section 42 of Act No. XXII of 1881, the provisions of which were different from those of the present Act. The use of the word "wilfully" seems to me clearly to show that in the case of the accused it must be proved that they had intention or knowledge. As for Kallu, who is said to have altered a page of the register, it seems that the original page, according to the finding of the court below, did not contain an incorrect entry. I have considerable hesitation in agreeing with the learned Sessions Judge that the word "accounts" does not mean correct and proper accounts, but even on that construction it can hardly be held, in view of the lower court's finding, that the accounts were not correctly kept.

Under these circumstances the conviction of the three accused was not justified. I accordingly set aside the convictions and sentences and direct that the fines, if paid, be refunded.

Convictions set aside.

(1) (1912) I. L. R., 34 ALL., 319.

(2) (1890) Criminal Reference No. 69 of 1890.