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CHANDRAN
KUNWAR,
S.
SHEO NATH.

relation to it, and of its bearing upon her interests. We, therefore, hold that the plaintiffs are not entitled to enforce it against the appellant.

Hasan, C.J.
and
Srivastava,
J.

The result therefore is that we allow the appeal and modify the decree of the lower court by dismissing the plaintiffs' claim against the defendant appellant. The defendant appellant is allowed her costs in both courts against the plaintiffs.

Appeal allowed.

APPELLATE CRIMINAL.

Before Mr. Justice Muhammad Raza and Mr. Justice Bisheshwar Nath Srivastava.

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January, 24.

KING-EMPEROR (COMPLAINANT-APPELLANT) v. CHUNNI
AND ANOTHER (ACCUSED-RESPONDENTS).*

United Provinces Excise Act (IV of 1910), sections 10, 50, 60(a) (g) and (j) and 70—Government Notification No. 576/XIII—85, dated 13th July, 1910—Police officer if to be treated as an Excise Officer for purposes of offences under section 60(a) and (g) of the Excise Act—Magistrate taking cognizance of an offence on the report of a police officer, legality of.

Held, that Notification No. 576/XIII—85, dated July 13, 1910 issued by the Local Government under section 50 of the Excise Act on exercise of the powers conferred by section 10 of the Act authorises all police officers to perform the acts and duties mentioned in section 50 in respect of the offences punishable under section 60 (a), (g) or (j) of the Excise Act and under section 3 (2) "Excise Officer" means a Collector or any officer or person appointed or invested with powers under section 10. Therefore a police officer who arrested an accused under section 50 of the Excise Act in connection with an offence under section 60 clause (a) of the Act was an excise officer within the meaning of that Act and the Magistrate who took cognizance of the case was

*Criminal Appeal No. 501 of 1930, against the order of S. Asghar Hasan, Sessions Judge of Hardoi, dated the 16th of September, 1930.

therefore competent to do so under section 70 of the Act as the police officer who made the complaint or report was an excise officer within the definition of the term as given in the Act.

Emperor v. Chhatter Singh (1), referred to.

The Government Advocate (Mr. H. K. Ghosh),
for the Crown.

Mr. Moti Lal Saksena, for the accused respondents.

RAZA and SRIVASTAVA, JJ:—This appeal has been filed by the Local Government against an order of the learned Sessions Judge of Hardoi, dated the 16th of September, 1930, reversing an order of Mr. Raja Ram Singh, Magistrate first class, Hardoi, dated the 7th of August, 1930, in a case under the United Provinces Excise Act (IV of 1910).

The facts relevant to the appeal, as alleged on behalf of the prosecution, may be shortly stated:—

Chunni and his daughter-in-law Musammat Bitto are Kalwars. They are residents of village Hariharpur in the district of Hardoi. The station officer of Tandiaon police station received information on the 14th of March, 1930, in the early hours of the morning, that the persons named above were in possession of illicit liquor. He raided the house at once and found three bottles of liquor in their possession. Musammat Bitto was in possession of two bottles on her person. She attempted to take them out of the house but was caught on the spot. She then tried to pour the contents out but the Sub-Inspector took possession of the bottles then and there. When the house was searched, another bottle was found buried in the *bhusa* in a *kothiri* which was used as a fodder godown. Two vessels containing fermented *shira* and pure *shira* were found on the roof of the house. The liquor found in these three bottles was sent to the Chemical Examiner who found it to be of illicit origin. Chunni and Musammat Bitto were then sent up for trial.

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They pleaded not guilty and alleged that they did not know whether the bottles in question were recovered from their house.

They were convicted by the learned Magistrate under section 60(a) of the Excise Act (Local Act IV of 1910). Chunni was sentenced to six months' rigorous imprisonment and Musammat Bitto, to a fine of Rs. 50 (or in default, three months' rigorous imprisonment). They appealed and their appeal was allowed by the learned Sessions Judge on a question of law. He accepted the appellants contention that the trying Magistrate had no jurisdiction to try the case as there was no "complaint or report of an excise officer", before him. The Government has appealed challenging the decision of the learned Judge on the question of law.

We have heard the learned Counsel on both sides. We think this appeal should be allowed.

The learned Sessions Judge has referred to a Government Notification No. 566 of July, 13, 1920. We think there is some mistake in this reference. The correct Notification is No. 576/XIII—85, dated July, 13, 1910. This Notification authorises all officers of the Excise, Salt, Opium, or Land Revenue departments and all police officers including the provincial chowkidari force, town, village and road chowkidars, to perform the acts and duties mentioned in section 50, in respect of the offences punishable under section 60(a),(g) or (j) of the Excise Act. This Notification was issued by the Local Government under section 50 of the Excise Act in exercise of the powers conferred by section 10 of the Act. Under section 3(2) of the Excise Act, "excise officer" means a Collector or any officer or person appointed or invested with powers under section 10. Therefore it is clear that the police officer who arrested the accused under section 50 of the Excise Act in connection with an offence under

section 60 clause (a) of the Act was an excise officer within the meaning of that Act. The Magistrate who took cognizance of the case was therefore competent to do so under section 70 of the Act as the police officer who made the complaint or report was an excise officer within the definition of the term as given in the Act. We think we should accept the contention of the learned Government Advocate on this point. He has referred to the ruling of the Allahabad High Court in the case of *Emperor v. Chhatter Singh* (1), in support of his contention. This ruling is also an authority for the proposition for which he contends. The following observations were made by their Lordships of the Allahabad High Court in the judgment in that case:—

“There can be no doubt that under section 10 of the Excise Act, the Local Government had authority to empower not only a Sub-Inspector of Police but any police officer to perform the duties and exercise powers under that Act, including the conferment of authority to make a report or complaint. Now the Local Government has in express terms authorized any police officer to arrest and to make searches in connection with a number of offences, including the offence of being in illicit possession of intoxicating liquor of which Chitor Singh has been convicted. It would certainly be anomalous if the Sub-Inspector had authority to arrest Chitar Singh and to search his shop and was moreover required by law to produce Chitar Singh before a competent Magistrate within twenty four hours of his arrest, but could not by reporting the facts to the Magistrate give that Magistrate authority to take cognizance of the alleged

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(1) (1923) 21 A.L.J., 922.

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offence. We think that this anomaly has been avoided by the very wide definition of the words "Excise Officer" contained in sub-clause 2 of section 3 of the Excise Act.

"According to that definition an 'Excise Officer' means not merely Collector or other officer appointed as such but also officer or person invested with powers under the Act by a Government order lawfully issued under the provisions of section 10. The Sub-Inspector as a police officer has been invested with powers under that section. This is sufficient to constitute an Excise Officer within the meaning of the definition, wherever the words 'Excise Officer' occur in the Act. It was therefore unnecessary, and would have complicated matters for the Local Government to issue a further Notification authorizing persons on whom it had already conferred powers for the purposes of the Act, to do something which the Act says any 'Excise Officer' may do."

A decision of this Court in the case of *Kallo v. King-Emperor* (1), also helps the contention of the learned Government Advocate. This case was decided by one of us on the 6th of July, 1926.

The result is that we allow this appeal and setting aside the order of the learned Sessions Judge direct him to dispose of the appeal on the merits.

The accused are present in Court. They are directed to attend the Court of the learned Sessions Judge on Friday the 30th of January, 1931.