

APPELLATE CRIMINAL.

Before Mr. Justice Harrison and Mr. Justice Jai Lal.

THE CROWN, Appellant

versus

NARAIN DAS AND OTHERS, Respondents.

Criminal Appeal No. 359 of 1925.

1926

March 18.

Punjab Excise Act, I of 1914, section 61 (1) (a)—Possession of excisable article—Absolute alcohol—Punjab Excise Manual, volume I, section 439—“Rectified spirit”—meaning of.

The accused-respondents pleaded that “absolute alcohol” found in their possession was of foreign origin and hence not covered by the prohibition of “rectified spirit.”

Held, that the class in which liquor falls depends upon the strength of the spirit or alcohol contained therein and that absolute alcohol is included in the term “rectified spirit”, the limit of private possession of which is one pint and that this limit applies equally to all rectified spirit whether of local or foreign origin.

Appeal from the order of Mian Abdul Rahim, Magistrate, 1st class, Lahore, dated the 25th May 1925, acquitting the respondents.

ANANT RAM, KHOSLA, for the Government Advocate, for Appellant.

MOTI SAGAR, for respondents.

The judgment of the Court was delivered by :—

HARRISON J.—It is an admitted fact that three persons, Narain Das, Bhagwan Das and Bishen Das, being the proprietors of a chemist’s shop were found in possession of 105 bottles of absolute alcohol on the 17th September 1924, and have committed an offence under section 61 (1) (a) of the Punjab Excise Act (I of 1914), if the possession of absolute alcohol is for-

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bidden. They have all been acquitted and the Crown has appealed against the acquittal.

Great stress is laid by the accused on the fact that the alcohol in their possession was of a foreign origin, and it is contended that such liquor is not covered by the prohibition of rectified spirit inasmuch as wherever these words are used they must be read as applying to rectified country spirit only. Arguing by analogy it is contended that as a man is allowed to possess any quantity of foreign potable spirit, which has paid duty, he should be allowed in the same way to possess as much rectified spirit or absolute alcohol of foreign extraction as he pleases. This is a specious argument, but the rules and notifications show that whatever the reason may be this is not the position. Absolute alcohol is included in the term rectified spirit, all spirit of a strength of more than 43 degrees or more over-proof being "rectified spirit". Section 439 of the Punjab Excise Manual, Volume I, lays down the limits of private possession of foreign liquor, country spirit, rectified spirit and denatured spirit, and there the limit for rectified spirit is one pint and the fact that it is not included in "foreign spirit" is shown by the wording of the section. The Magistrate, has, I think, been misled by the fact that it was found necessary to issue rule 339-A to draw attention to the fact, which should have been clear before, that 'absolute alcohol' is included in the term "rectified spirit", for it is a smaller sub-division of the same class of spirit, ranging from 75 degrees to 100 degrees over London Proof. Another rule which may have misled the Magistrate is that at page 133 of the same Manual a definition is given in section 453 of "rectified spirit" as country spirit of not less

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than 43 degrees over-proof. This, however, occurs in the chapter on Distilleries, and in distilleries nothing but country spirit can be distilled inasmuch as the rules only apply to this country. We fail to follow the reasoning of the Magistrate where he says that it is like arguing in a circle to hold that all alcohol is spirit. It is obviously true and the class in which liquor falls depends upon the strength of the spirit or rather of the alcohol contained therein. Spirit is defined in section 3 (19) of the Act as any liquor containing alcohol obtained by distillation. Absolute alcohol in the strict sense means spirit which is 100 *per cent.* alcohol, but for purposes of these rules it has been defined (*vide* Mr. Brady's evidence) as liquor of 75·35 degrees or more over London proof. It follows, therefore, that the accused have committed an offence under section 61 (1) (a) of the Punjab Excise Act ; but no moral obliquity attaches to their conduct and it will be sufficient, in our opinion, if they are ordered to pay a fine of Rs. 50 each. The record shows that the proceedings were terribly and unnecessarily protracted by the asking of futile questions by counsel for the accused the answers to which could not but be inadmissible.

We accept the appeal, convict the accused and sentence each to pay a fine of Rs. 50 or in default to undergo 3 days' simple imprisonment

N. F. E.

Appeal accepted.