

REVISIONAL CRIMINAL.

Before Sir Shadi Lal, Chief Justice.

THE CROWN—Petitioner

versus

PIARA SINGH—Respondent.

Criminal Revision No. 1127 of 1925.

Punjab Excise Act, I of 1914, section 61 (1)—Punishment of offender—Criminal Procedure Code, Act V of 1898, section 562—First offender—whether section applicable in such a case.

Held, that in awarding punishment for an offence under the Excise Act the Courts should bear in mind that illicit distillation implies a good deal of preparation and results, not only in loss of excise revenue, but also in drunkenness. Judicial experience also shows that the offence often escapes detection, and it is, therefore, necessary to impose a sentence which will have a deterrent effect.

Crown v. Sujan Singh (1), followed.

Held also, that, although section 562 of the Code of Criminal Procedure (as amended by Act XVIII of 1923) applies also to persons who are found guilty of an offence under a Special or Local Act, its provisions should not ordinarily be applied to a person convicted of an offence under section 61 (1) of the Excise Act which implies previous preparation and often escapes detection.

Case reported by Lala Munna Lal, Sessions Judge, Sialkot, with his No. 222-J., of the 23rd June 1925.

GOVIND RAM, for the Government Advocate, for Petitioner.

MOHSIN SHAH, for Respondent.

The accused was convicted by *Sardar Balwant Singh, Garewal*, a Magistrate of the 1st Class of an

SINGH under section 61 (1) of the Punjab Excise Act, I of 1914 and was sentenced, by order, dated the 31st day of March 1925, to pay a fine of Rs. 200 or in default to undergo 6 months' rigorous imprisonment.

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The Sessions Judge, being of opinion that the sentence was inadequate, submitted the case to the High Court.

JUDGMENT.

SIR SHADI LAL C. J.—There is ample evidence on the record to prove the fact that on the night between the 14th and 15th of February, 1925, the accused Piara Singh was found distilling illicit liquor in his field; and it is common ground that a distilling apparatus, a large quantity of *lahan* and two bottles containing illicit liquor were recovered from the field. The Courts below have concurred in holding that Piara Singh is guilty of an offence described in clause (a) of section 61, sub-section (1) of the Punjab Excise Act, I of 1914; and I have no hesitation in endorsing their conclusion.

The trial Magistrate has sentenced the convict to a fine of Rs. 200, but the learned Sessions Judge considers the sentence to be inadequate, and has submitted the record to this Court, under section 438, Criminal Procedure Code, with a recommendation that the sentence be enhanced. In awarding punishment for an offence under the Excise Act the Courts must always bear in mind that illicit distillation implies a good deal of preparation and results, not only in the loss of excise revenue, but also in drunkenness. Judicial experience also shows that the offence often escapes detection, and, as laid down in *Crown v. Sujan Singh, etc.* (1), it is necessary to impose a sentence

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which would have a deterrent effect. That this was the intention of the Legislature is clear from the fact that the maximum term of imprisonment for manufacturing illicit liquor was raised in 1914 from four months to one year, and has recently been further enhanced to two years, *vide* section 2 of the Punjab Excise (Amendment) Act, II of 1925.

In view of the large profits derived from illicit distillation and the fact that the crime is not always detected, I do not think that the sentence of a mere fine can have any deterrent effect. Nor do I consider that the principle embodied in section 562, Criminal Procedure Code, which, as amended by Act XVIII of 1923, applies, not only to persons who are convicted of an offence punishable under the Indian Penal Code, but also to those who are found guilty of an offence punishable under a special or a local Act, can be reasonably invoked by a person convicted of an offence like the present which, as I have already observed, not only implies previous preparation but often escapes detection. It cannot be urged on behalf of such a convict that he had succumbed to a sudden temptation, and that the Court should, therefore, exercise its discretion under the section in his favour and give him another chance. It is not desirable to lay down a hard and fast rule, and exceptional circumstances may outweigh these considerations and warrant the application of the rule enacted by the said section. Such cases are, however, rare and ordinarily a person convicted under section 61 (1) of the Excise Act is not entitled to the benefit of section 562, Criminal Procedure Code.

Having regard to the principles enunciated above I am of opinion that the sentence awarded by the Magistrate is manifestly inadequate. While dis-

missing the application for revision preferred by the convict I accept the recommendation made by the learned Sessions Judge so far as to impose upon the convict a sentence of rigorous imprisonment for 6 months in addition to the fine inflicted by the Magistrate.

C. H. O.

Revision accepted.

APPELLATE CIVIL.

Before Mr. Justice Zafar Ali and Mr. Justice Addison.

RANG ILAHI (DEFENDANT) Appellant

versus

MAHBUB ILAHI AND ANOTHER (PLAINTIFFS)

Respondents.

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Nov. 19.

Civil Appeal No. 1302 of 1921.

Muhammadian Law—Alienation by mother of minor son's property—invalid—Discretionary power of Court to order refund of the amount by which the minor and his estate has benefited—Specific Relief Act, 1 of 1877, section 41.

It is settled law that a Muhammadian mother has no power to alienate the property of her minor son. This being so, the mortgage in the present case made by the plaintiffs' mother was void *ab initio*, and the mortgagee's position was no better than that of a trespasser.

Imambandi v. Mutsaddi (1), followed.

Held however, that in setting aside the mortgage the Court had discretionary power under section 41 of the Specific Relief Act to make it a condition that the minors should refund the amount by which their estate and themselves were benefited, and that the lower Court had correctly assessed this amount.