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a default in filing, with the Registrar of the Joint Stock Companies, a copy of the list of the shareholders and of the summary described in section 32, sub-section (2) of the Indian Companies Act. Indeed the learned Government Advocate admits that the guilt of the petitioners had not been established.

I accordingly accept the recommendation made by the Sessions Judge and setting aside the conviction and the sentence direct that the fines, if realised, be refunded to the accused.

N. F. E.

Revision accepted.

REVISIONAL CRIMINAL.

Before Sir Shadi Lal, Chief Justice.

KEHR SINGH, Petitioner

versus

THE CROWN, Respondent.

Criminal Revision No. 1564 of 1928.

Punjab Excise Act, I of 1914, section 61 (1)—Accused in possession of a small quantity of cocaine for his personal use—Sentence—Considerations which should weigh with the Courts in inflicting punishment.

Four packets of cocaine weighing about 8 grains were found in the inner pocket of the petitioner's coat and he was convicted under section 61 (1) of the Punjab Excise Act, I of 1914, and sentenced to rigorous imprisonment for two years, the maximum term of imprisonment laid down in the section.

Held, that having regard to the fact that the small quantity of cocaine was for the petitioner's personal use, that he was a first offender, and that the section lays down the same penalty for much more serious offences, the period of imprisonment (nearly 5 months) already undergone by the petitioner would meet the ends of justice.

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Courts should realize the necessity of a proportion between an offence and penalty, and should not inflict the maximum term of imprisonment on every offender without any regard to the seriousness or otherwise of the offence committed by him.

Application for revision of the order of A. L. Gordon Walker, Esquire, Sessions Judge, Amritsar, dated the 1st August 1928, affirming that of Diwan Kahan Chand, Magistrate, 1st Class, Amritsar, dated the 29th May 1928, convicting the petitioner.

ANANT RAM, for Petitioner.

CARDEN-NOAD, Government Advocate, for Respondent.

JUDGMENT.

SIR SHADI LAL C.J.—On the 29th February, 1928, four packets of cocaine, weighing about 8 grains, were found in the inner pocket of the prisoner's coat ; and he has consequently been convicted under section 61 (1) of the Punjab Excise Act (I of 1914), and sentenced to suffer rigorous imprisonment for two years.

The propriety of the conviction has not been challenged before me ; and the only question, upon which I have to pronounce my opinion, is whether the sentence imposed upon the offender is excessive and should, therefore, be reduced. It is to be observed that while section 61 (1) of the Statute enumerates offences of varying degrees of gravity, such as constructing or working a distillery or brewery, importing or exporting an excisable article, possessing an excisable article, etc., it prescribes the same maximum penalty, namely, imprisonment for a period of two years and a fine of Rs. 2,000, for

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each of these offences. The law confers a wide discretion upon the Judge, and leaves it to him to decide in each case whether the act done by the offender falls short of the maximum degree of gravity, and, if so, to what extent. The Court should realise the necessity of a proportion between an offence and the penalty; and should not inflict the maximum term of imprisonment on every offender without any regard to the seriousness or otherwise of the offence committed by him. While apportioning the punishment, it should also take into consideration the circumstances under which the offence was committed and the fact whether the criminal is a first offender or a habitual or professional offender.

It is obviously impossible to give an exhaustive list of the circumstances which should be taken into consideration in determining the amount of the punishment, or to lay down any mathematical formula to measure the penalty in each case. But it is perfectly clear that the maximum punishment prescribed by the law should not automatically follow upon a conviction.

Now, the convict in the present case possessed a small quantity of cocaine for his personal use, and he appears to be a first offender. It cannot be seriously disputed that there ought to be a distinction between a manufacturer or seller of an excisable article, who not only derives profit from the transaction but also demoralises other people, and a person who possesses it for his own use. The latter no doubt commits an offence, but, if he is to suffer the maximum term of imprisonment, what is the punishment to be imposed upon the former whose offence is admittedly of a much graver character?

As pointed out above, when the Legislature has laid down a maximum punishment for an offence or a series of offences, it is the duty of the trial Court to apportion punishment in each case after considering all the circumstances having a bearing upon it, and not to shirk its responsibility by imposing the maximum penalty upon every offender.

The petitioner has already suffered imprisonment for a period of nearly five months, and in view of all the circumstances of the case I consider that the sentence undergone by him will meet the ends of justice. I accordingly accept the application for revision so far as to reduce the sentence of imprisonment to the period already undergone.

A. N. C.

Sentence reduced.

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