

We think that the order of the Sessions Judge is wrong on both points. We make the rule absolute, and direct that the case be taken up by the Sessions Judge and re-tried. Such evidence as he may require he must take himself.

S. C. B.

1896  
 IN THE  
 MATTER OF  
 HOJAH  
 SINGH  
 v.  
 QUEEN-  
 EMPRESS.

*Before Mr. Justice Macpherson and Mr. Justice Banerjee.*

GONESH CHUNDER SIKDAR (PETITIONER) v. QUEEN-EMPRESS ON  
 THE PROSECUTION OF KAMINI MOHUN SEN, SUB-INSPECTOR OF  
 EXCISE (OPPOSITE PARTY.) \*

1896  
 Sept. 8.

*Bengal Excise Act (Bengal Act VII of 1878), section 53—Spirituous Liquor—  
 Medicinal preparation containing alcohol.*

The term "spirituous liquor" in section 53 of the Excise Act (Bengal Act VII of 1878) is not intended to include a medicinal preparation merely because it is a liquid substance containing alcohol in its composition. The case would be different if alcohol were manufactured separately for the purpose of being used in the preparation of a medicine.

THE petitioner, who was a *kobiraj* by profession, was convicted by the Deputy Magistrate of Goalundo under section 53 of the Excise Act (Bengal Act VII of 1878) for manufacturing, by the process of fermentation, a medicinal preparation called *sanjivani sura*, without a license, and was sentenced to pay a fine of Rs. 15. He moved the High Court to set aside the conviction and sentence on the ground that his act did not constitute any offence under section 53 of the Excise Act.

Babu *Sarat Chundra Khan* for the petitioner argued that the object of the accused was to prepare a medicinal preparation, to be used for medicinal purposes, and not to be consumed as a spirituous liquor.

The *Deputy Legal Remembrancer* (Mr. *Gordon Leith*) for the Crown.—The object of the preparation is immaterial; the process resorted to by the accused was the usual process employed for extracting alcohol, and the result showed the presence of a considerable quantity of alcohol. A spirituous liquor has been manufactured, and that is sufficient to make out an offence under section 53 of the Excise Act.

\* Criminal Revision No. 335 of 1896 against the order of Babu Rajoni Nath Chatterjee, Deputy Magistrate of Goalundo, dated the 8th May 1896.

1896

GONESH  
CHUNDER  
SIKDAR  
v.  
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EMPRESS.

The judgment of the High Court (MACPHERSON and BANERJEE, JJ.) was as follows :—

The petitioner, who has been convicted by the Deputy Magistrate of Goalundo under section 53 of the Excise Act (Bengal Act VII of 1878), for manufacturing a liquor called *sanjivani sura* without a license, and has been sentenced to pay a fine of Rs. 15, asks us to set aside the conviction and sentence on the ground that the act of the petitioner does not constitute any offence under section 53 of the Act.

The facts of the case are thus set out by the learned Deputy Magistrate in the brief statement of reasons under section 263, Criminal Procedure Code: "The accused was found manufacturing a kind of liquor which he calls *sanjivani sura*, or life-reviving liquor. He has no license from the Collector to manufacture any liquor. The liquor was made by fermentation of *gur* and different spices. The strength of the liquor is 36 degrees below London proof. Accused's act falls under the purview of section 53 of Bengal Act VII of 1878. There is no doubt that he was making it for medicinal purposes, but the law makes no exception in his favour. The accused admits having made the liquor. He is a *kobiraj* by profession."

These being the facts of the case, the question is, whether any offence under section 53 of the Excise Act is established against the accused.

Section 53 of the Excise Act provides that "whoever manufactures or sells any excisable article without a license shall be liable to a fine not exceeding Rs. 500 for every such manufacture or sale." Now excisable article, as defined in section 4 of the Act, "includes spirituous and fermented liquors and intoxicating drugs as defined by the Act;" and 'spirituous liquor,' 'fermented liquor' and 'intoxicating drug' are by the same section defined thus :—

"Spirituous liquor includes any spirituous liquor imported into India or manufactured in India by any process of distillation."

"Fermented liquor includes malt liquor of all kinds, *tari* fresh or fermented, *pachwai* diluted, or undiluted, or any other intoxicating liquor which the local Government may from time to time declare to be included in this definition."

“Intoxicating drugs include *ganja*, *bhang*, *charus*, every preparation and admixture of any of the above, or any other intoxicating drug which the local Government may from time to time declare to be included in this definition.”

So that the only description of excisable article under which the liquor in question can possibly come is “spirituous liquor.”

If it comes under that description the conviction is right ; if not, it must be held to be wrong.

The term “ spirituous liquor ” is not however defined in the Act. What is given as the definition of the term is, strictly speaking, no definition at all. It merely says “ spirituous liquor includes any spirituous liquor imported into India or manufactured in India by any process of distillation.” So that it assumes that the term has a recognised meaning, though it does not say what that meaning is. Now whatever the exact meaning of the term may be, we do not think that it is intended to include a medicinal preparation merely because it is a liquid substance containing alcohol in its composition. We observe that the liquor in the present case was manufactured from *gur* or treacle mixed with other ingredients, as to the nature of which we know nothing except this, that the preparation was made for medicinal purposes. The case would have been different if the accused had been found manufacturing alcohol or spirits separately for the purpose of being used in the preparation of a medicine. That, however, is not the case here. What he is found to have manufactured by the processes of fermentation and distillation is not alcohol or spirit separately, but the compound substance, the medicine, at once. That act does not in our opinion come within the purview of section 53.

The view we take receives support from the consideration that if it was an offence to manufacture this particular liquor, it would equally be an offence under section 53 to sell it ; but we do not think that on the facts found in this case a conviction for selling it without license could be maintained.

The conviction and sentence in this case must therefore be set aside, and the fine if realised must be refunded.

*Conviction set aside.*

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