CRIMINAL REVISION.

Before Holmwood and Imam JJ.

1912

Aug. 16.

GANPAT RAI

v.

EMPEROR.*

Petroleum—Keeping in possession a quantity exceeding the maximum allowed by law—Liability of a licensee for the acts of his servant or agent in the absence of a finding of guilty knowledge on his own part—Petroleum Act (VIII of 1899), ss. 11 and 15(a).

A licensee is not, in the absence of a finding by the Court that he knew that more than 500 gallons of petroleum were being transported at one time on his license, and that he allowed the same to take place with such knowledge, by his servant, criminally liable, under ss. 11 and 15(*a*) of the Indian Petroleum Act (VIII of 1899), for the acts of the latter done in contravention of the law. Though the Act provides a personal penalty, the only person that can be punished is the one who keeps petroleum, or carries it about or puts more than 500 gallons at one place.

THE petitioner, Ganpat Rai, who resided at Ranchi, was the senior proprietor and licensee of a firm called "Chunilal Ganpat Rai" dealing in petroleum, with a branch shop at Daltongunge. The business was carried on at the latter place by an agent or manager named Sheo Bhagwan. On the 5th January 1912 a complaint was lodged against the petitioner, under s. 5 of the Indian Petroleum Act (VIII of 1899), for storing dangerous petroleum exceeding 40 gallons. The case was tried by Moulvi A. Rashid, Deputy Magistrate of Palamau. The defence of the petitioner was that he had left the management of the Daltongunge shop entirely in the hands of Sheo Bhagwan,

* Criminal Revision, No. 1031 of 1912, against the order of D. H Kingsford, Judicial Commissioner of Chota Nagpur, dated May 13, 1912

and had not authorized the latter to import or keep petroleum in contravention of the law, and that the latter used to import petroleum for other firms and also on his own account in the name of the petitioner's firm of which facts he, the petitioner, had then no knowledge or information. Sheo Bhagwan was examined as a prosecution witness and stated that he had transported more than 150 tins, equivalent to 500 gallons, at a time for the petitioner. The Magistrate convicted the latter on three charges under ss. 11 and 15(*a*) of the Petroleum Act, by his judgment, dated the 4th April 1912, and sentenced him on each count to a fine of Rs. 50, and in default to 15 days' simple imprisoment. The material portions of his judgment were as follows :—

The facts on which the charge is established are not controverted. The only question that is raised for decision is whether the accused proprietor is criminally liable for the acts of his agent done in his representative capacity. I have been referred to a number of rulings on the subject by the learned pleader for the defence. None of these, however, is quite on all fours with the circumstances of the present case. The question whether a master is criminally liable for the acts of his servant is, I venture to think, a question of fact rather than of law. To make the master liable there must be evidence of express direction to do the act, or connivance on his part. In the present case, although there is nothing to show direction on the part of the accused, it is impossible to believe that he never connived at it for the practice has been going on from a long time and nothing has been shown to prove disapprobation, on the part of the accused, of his agent's act. The act done by the agent was in his representative capacity as appears from his endorsement on the delivery book. On the three dates specified above the firm of Chuni Lal Ganpat Rai had in its possession petroleum in excess of the maximum prescribed by law, and it does not matter whether the petroleum was stored in one shop or at two different places. The petroleum kept at Ram Lachan Saho's shop for commission, of course, did not bar the possession of the accused as head of the firm.

An application to the Judicial Commissioner of Chota Nagpur, under s. 438 of the Criminal Procedure Code, was rejected by him on the 13th May 1912. The

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petitioner then moved the High Court and obtained the present Rule on the grounds, *first*, that there being no finding or evidence of knowledge or direction on the petitioner's part of the exportation or storage of petroleum, by his servant, in excess of the quantity allowed by law, the conviction was bad; *secondly*, that the petitioner was not criminally liable for the illegal act of his servant, when the latter was not empowered by the firm to keep or sell more than 150 tins; and, *thirdly*, that the petitioner was not so liable when the petroleum imported in excess of the prescribed quantity, by the servant, was not for the petitioner's firm but for other firms also and in contravention of the petitioner's directions.

Babu Rajendra Prosad, for the petitioner.
Babu Srish Chandra Chowdhury, for the Crown.

HOLMWOOD AND IMAM, JJ. We are of opinion that this Rule must be made absolute upon the grounds on which it was issued.

The law (Act VIII of 1899) lays down in section 11:—"No quantity of petroleum exceeding 500 gallons shall be kept by any one person, or on the same premises, or shall be transported, except under, and in accordance with, the conditions of a license granted under this Act."

Now, it is found that a person named Sheo Bhagwan, who was an agent of the petitioner and also apparently agent of several other persons in the sale of petroleum, imported or rather transported (for we do not know how this petroleum was imported into this country) more than 150 tins at a time, and we are told that 150 tins is equal to the maximum allowed, viz., 500 gallons. If, therefore, Sheo Bhagwan transported more than 150 tins, he is guilty of transporting petroleum in contravention of the Act. But we are

unable to see that the principal, Ganpat Rai, is responsible for this, unless there is a finding that he knew that more than 150 tins were being transported at one time on his license, and allowed this to take place with such knowledge. Now, there is no finding to that effect.

The agent, Sheo Bhagwan, seems to have been allowed to give evidence, and, of course, being himself the guilty person, he would naturally try to shift the blame on to his principal. He says that he did transport more than 150 tins for his principal at one time and despatched them in parcels of 150 gallons to the dealers. Still we are unable to say, there being no finding to that effect, that the petitioner was in any way responsible for this illegal proceeding.

The second point depends upon the first, and has already been decided by us, namely, that the petitioner cannot be held criminally liable for any illegal act of the said agent. There is no provision, as far as we can see, in this Act as there is in the Excise Act and in the Motor Car Act, which makes the principal responsible for the acts of his agents or servants, and nothing can be read into the law which is not to be found in the law.

As regards the third ground, we have already referred to that. It relates to the contention of the petitioner that Sheo Bhagwan was agent for other firms as well as for the petitioner, and that it is impossible for the petitioner to know how much petroleum was imported for his use and how much for that of the others. It is argued by the learned vakil for the Crown that, as Ganpat Rai took commission or profit of one pice per tin on every tin sold, he must have been aware of how many tins were in the possession of his agent at one time. This does not seem to us to be at all a necessary conclusion. A stock of 150 tins

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may be sold out gradually and be replenished from time to time, and it is impossible for the absent principal to know whether at one time his agent had 150 tins on his behalf or on behalf of the other firms. Even though the Act provides a personal penalty, we think the only person that can be punished is the one who keeps petroleum or carries it about or puts more than 150 tins at one place. For these reasons, the Rule must be made absolute, and the conviction and sentence set aside. The fines if paid must be refunded.

E. H. M. *Rule absolute.*

APPELLATE CRIMINAL.

Before Sharfuddin and Coxe JJ.

DILAN SINGH
v.
EMPEROR.*

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Aug. 26.

Jurisdiction of Criminal Court—Complaint—Irregularity—Criminal Procedure Code (Act V of 1898) ss. 195, 476, 532, 537—Order for prosecution—Penal Code (Act XLV of 1860) s. 211—False charge laid before the police—Police report—Judicial inquiry—Commitment to the Court of Sessions.

A conviction by the Court of Sessions cannot be set aside simply on the ground of a defect in the initiation of the proceedings in the Commitment Court or on the ground of some irregularity in the commitment proceedings more especially when that point was not raised in the lower Court. S. 532 of the Criminal Procedure Code would cure such a defect.

Haibat Khan v. *Emperor* (1) distinguished.

* Criminal Appeal No. 576 of 1912 against the order of C. E. Pittar, Sessions Judge of Gaya, dated July 9, 1912.

(1) (1905) I. L. R. 33 Calc. 30.