

Present: Lyall Grant J.

1929.

INSPECTOR OF EXCISE v. LEBBE.

568—P. C. Dandagamuwa, 3,361.

Excise Ordinance—Hemp plant—Excisable article—Ordinance No. 8 of 1912, s. 3 (13).

A hemp plant is an excisable article within the meaning of section 3, sub-section (13), of the Excise Ordinance.

A PPEAL from an acquittal from the Police Court of Dandagamuwa.

J. E. M. Obeyesekere, U.C., for appellant.

Deraniyagala, for respondent.

October 9, 1929. LYALL GRANT J.—

This is an appeal by a complainant, an Excise Inspector, with the sanction of the Attorney-General from an acquittal.

The accused-respondent was charged with having cultivated an excisable article, namely, ganja, without a licence from the Government Agent in contravention of section 14 (b) of Excise Ordinance, No. 8 of 1912.

He was also charged with possessing ganja. After trial he was acquitted.

The charge of possession was not pressed on appeal, but it was submitted that the evidence clearly establishes that the accused cultivated ganja.

The Magistrate found it to be proved that the ganja plants were found on a site cleared and prepared in a belt of jungle adjoining the accused's garden—a spot which was also accessible to other persons.

The Magistrate proceeds: "The only evidence to connect the accused with the ganja plants is the evidence of the complainant and the evidence of Excise Guard William Silva. The complainant says that accused came near the plants, loosened the soil and pulled up some weeds. Excise Guard William Silva says that accused came near the spot and loosened the soil round the trees. This evidence is insufficient to fix the accused with possession or cultivation of the plants."

It may be added that the evidence shows that the Excise Officer remained in concealment in the early morning and the accused came at about 5.30 or 6 A.M. while it was dawning. It was submitted for the prosecution that the Magistrate had overlooked

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the effect of section 50 of the Excise Ordinance. Section 50 provides that in prosecutions such as the present it shall be presumed, till the contrary is proved, that the accused person has committed an offence under that section in respect of either any excisable article or any such material as is ordinarily used in the manufacture of an excisable article, for his conduct in connection with which he is unable to account satisfactorily.

It was contended that in the present case the conduct of the accused in connexion with these ganja plants was suspicious and such as to call for an explanation. No explanation has been given. In the absence of such explanation it is to be presumed that the accused is unable to account satisfactorily for his conduct in connection with the plants. This amounts to proof that the accused has committed an offence under section 43 (c), that is, of cultivating the hemp plant (*cannabis indica*) or ganja.

It was conceded for the appellant that but for the provisions of section 50 of the Excise Ordinance the Magistrate's judgment was perfectly correct, but it was argued that this section has the effect, in circumstances such as we have here, of throwing the burden of proof on the accused and that the accused has failed to discharge that burden.

I think there is great weight in this contention. It is evident that the provisions of section 50 have not been fully considered by the Magistrate.

It was, however, contended in favour of the accused that section 50 does not apply to the cultivation of ganja plants.

It was maintained that while ganja was an excisable article, a hemp plant was not. Reference was made to the definition in section 3 (13) of excisable articles.

Section 3 (13) reads:—"Excisable articles means and includes any liquor or intoxicating drug as defined by this Ordinance."

By section 11 intoxicating drug includes ganja and every preparation and mixture of the same and every intoxicating drink or substance prepared from the hemp plant (*cannabis indica*) or from any other material.

It seems to me that if the hemp plant cannot itself be described as ganja, it may well be an intoxicating drug under this definition, inasmuch as it is material from which ganja is made.

Accordingly such a plant comes within the scope of section 50, which deals not merely with ganja but with every excisable article.

The matter however is set at rest by Excise Notification No. 24 published in *Government Gazette* No. 6,606 of February 13, 1914, made by virtue of section 3, sub-section (11) (b) of the Ordinance which empowers the Governor by notification in the *Gazette* to

define what shall be deemed to be ganja. By this notification the Governor declares that the term "ganja" shall be taken to include every part of the hemp plant.

I have come to the conclusion that in this case the accused ought to have been convicted.

The case is returned to the Magistrate in order that he may record a conviction against the accused and for sentence.

I may add that I quite agree with the remarks made by the Magistrate in regard to the Excise Inspector's conduct in removing the exhibits from the Court.

Set aside.

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