

ALLAHABAD HIGH COURT

Emperor

Vs

Lachmi Narain

(George Knox and Aikman, JJ.)

15.05.1908

JUDGMENT

George Knox and Aikman, JJ.

1. This is an appeal by the Local Government from an appellate judgment of acquittal passed by the learned Sessions Judge of Agra. The accused was convicted by a Magistrate of the first class of an offence under Section 48 of Act No. XII of 1896. He was sentenced to the maximum term of imprisonment prescribed by the Section and to a fine of Rs. 40. On appeal the conviction and sentence were set aside by the learned Sessions Judge of Agra on the ground that under Section 57 of the Act no Court can take cognizance of an offence under the Act except on a complaint or report of an Excise Officer. According to the evidence for the prosecution the accused was arrested with eighteen tolas of charas in his possession by a police constable and a head constable. They through, their official superior brought the case for trial before the Magistrate. The learned Judge held that the police could not institute the proceedings, and that they could only be instituted by an Excise Officer, which term, the learned Judge holds, means the Excise Inspector, or, where there is no such officer in the District, the Collector or Assistant Collector in charge of excise. In our opinion the view taken by the learned Judge is erroneous. He overlooked the provisions of Section 44. Sub-section (2) of the Act.' The learned Government Advocate has called our attention to the ruling in Queen-Empress v. Makunda (1897) I.L.R., 20 All., 70, which fully supports the view for which he contends. We have heard what the learned vakil who appears for the accused could say on his client's behalf. We have also read the evidence. In our opinion it clearly proves an offence under Section 48, Clause (e) of the Excise Act, 1896. We were addressed on the question of sentence. It is apparently the first time that Lachmi Narain has been convicted. He has already been upwards of three weeks in jail and he has paid the fine which was imposed on him. We accordingly allow this appeal, and, setting aside the judgment of acquittal, convict Lachmi Narain of the offence specified above. We sentence him to the term of imprisonment which he has already undergone, and to the fine which he has already paid.