

Bachan Singh and others  
 v.  
 Firm Arhat  
 Ram Singh-  
 Bakhtawar  
 Singh  
 Kapur, J.

second appeal I should interfere with the discretion of the learned Judge. I would, therefore, dismiss this appeal.

In the result, Execution Second Appeal No. 601 of 1955, is allowed and Execution Second Appeal No. 742 of 1955, is dismissed. Costs will abide the event.

The parties are directed to appear in the Court of the District Judge on the 8th October, 1956.

APPELLATE CRIMINAL

*Before Falshaw and Kapur, JJ.*

THE STATE,—Appellant

*versus*

TEJA SINGH,—Respondent

**Criminal Appeal No. 405 of 1955.**

1956 *Punjab Excise Act (I of 1914)—Section 61(1)(a)*  
 “Lahan”—*Meaning of.*

September, 3rd

*Held*, that term “Lahan” means a mixture of any substance which, on fermentation is capable of producing alcohol, together with a fermenting agent of which there are many. It is the substance out of which alcohol is distilled and if the person who possesses any quantity of this substance has no licence of distilling alcohol, its possession is a criminal offence under the Excise Act, although “Lahan” may not itself be an intoxicating substance.

*The State v. Sulakhan Singh* (1), referred to.

*State Appeal from the order of Shri Amar Singh, Magistrate, 1st Class, Rupar, District Ambala, dated the 18th March, 1955, convicting the respondent.*

HAR PARSHAD, Assistant Advocate-General, for Appellant.

RAM SARUP and D. S. KANG, for Respondent.

## JUDGMENT ...

FALSHAW, J.—These are two appeals filed by Falshaw, J. the State against orders of acquittal in which the point involved is the same. In fact the decision in the second case has followed the decision in the first. In the first case (Criminal Appeal No. 445 of 1955) Bhagat Singh respondent was tried by a Magistrate at Ambala on a charge under section 61(1)(a) of the Punjab Excise Act on the allegation that on the 30th of November, 1954, on a raid of his house by Police and Excise officers a tin containing 16 seers of Lahan was recovered. The lahan has been stated by an experienced Excise officer to be in such a state of fermentation that it was ready for distillation. The trial Magistrate rejected the defence of the accused that the tin containing lahan had been planted in his house and convicting him under section 61(1)(a) sentenced him to a fine of Rs. 51 or in default two months' rigorous imprisonment. His appeal, however, was accepted by the learned Sessions Judge who without discussing the question of possession has held that the substance recovered was not proved to be lahan which is a vague substance not properly defined anywhere in the Excise Act or in the rules framed thereunder. In the other case (Criminal Appeal No. 403), Teja Singh respondent was tried by a Magistrate at Rupar on a charge under section 61(1)(a) of the Punjab Excise Act on the allegation that on the 11th of February, 1955 he confessed to a party of Police officers that he had buried two pitchers of lahan in his field, and in consequence of this statement two pitchers each containing 12 seers of lahan which Excise Sub-Inspector, Avtar Singh, P.W. has testified to be in a state of fermentation such as to be ready for distillation, were actually recovered. The learned Magistrate accepted the evidence of the confession

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and recovery which established the possession of the accused, but he acquitted him on much the same grounds as those given by the learned Sessions Judge in the case of Bhagat Singh. In fact he followed an earlier judgment of the same learned Sessions Judge on similar lines.

Section 61(1)(a) of the Excise Act makes punishable the possession of any intoxicants in contravention of any section of the Excise Act or any rules, notifications or orders made thereunder. "Intoxicant" is defined in the Excise Manual as meaning "any liquor or intoxicant drug." "Liquor" is defined in the Excise Manual as meaning intoxicating liquor and includes liquids consisting of or containing alcohol, and also any substance which the provisions made by notification declare to be liquor for the purposes of this Act, Rule 1(a) of Chapter 1 of the Excise Manual amplifies this by providing that the substance commonly known as lahan of whatsoever ingredients such substance may be composed whether it has undergone the process of distillation or not shall be liquor for the purposes of the Punjab Excise Act of 1914.

In my opinion the doubts and hesitation of the learned Sessions Judge in which he is now apparently been followed by the Magistrates in his Division though not, so far as I am aware, in any other part of the State, appear to me to be wholly unfounded. The meaning of the term 'lahan' is well understood without any precise definition and in fact it might not be easy to find comprehensive definition for it since lahan can consist of many different ingredients. The term 'lahan' means a mixture of any substance which on fermentation is capable of producing alcohol, together with a fermenting agent, of which

there are many. It seems to me to be quite out of place of the learned Sessions Judge to embark on the discussion as to whether lahan itself is an intoxicating substance or not. It is the substance out of which alcohol is distilled and if the person who possesses any quantity of this substance, has no licence for distilling alcohol, its possession is a criminal offence under the Excise Act, and although lahan may not in itself be an intoxicating substance, particularly if it is recovered before the process of fermentation has had time to take effect. It is quite open to the Government to include lahan as such as falling within the term 'liquor' and thereby to make its possession without a licence an offence under the Excise Act. We have in fact held in another case, *The State v. Sulakhan Singh* (1), that lahan is lahan once the ingredients have been mixed whatever stage the process of fermentation may have reached. In the present case I can see no reason whatever for disbelieving the evidence which establishes the possession of the quantities of lahan by the respondents in the two cases, and I cannot see any reason whatever for not accepting the evidence of the trained Excise Officers in these cases that the substances recovered were lahan in a process of fermentation ripe for distillation. I would accordingly accept both these appeals and convict Teja Singh and Bhagat Singh respondents under section 61(1)(a) of the Excise Act and sentence each of them to pay a fine of Rs. 50 or in default to undergo two months' rigorous imprisonment. The respondents must surrender to their bail bonds which will be cancelled if the fines are paid. Otherwise they must be sent to jail to serve their sentences in default.

Kapur, J. I agree.

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(1) 58 P.L.R. 359