Jagir Singh and others, *v.* Narain Singh, etc

the special custom which they had set out to prove. With this conclusion I find myself in complete agreement.

Bhandari, C. J.

Nor is there any substance in the contention put forward on behalf of the proprietors that the present suit is barred by time so far as the land left by Mst. Dholan is concerned. This occupancy tenant died in the year 1918 and the mutation of her land was sanctioned on the 4th June 1919,—*vide* Exhibit D. 29. It is true that the land left by her remained in the possession of the proprietors but as both the proprietors and occupancy tenants are co-sharers in the land the possession of one co-sharer must be deemed to be for and on behalf of all the co-sharers. In the absence of any evidence of ouster or the assertion of a hostile title by the proprietors the occupancy tenants are at liberty to apply for a partition of their share.

For these reasons I would accept the appeal, set aside the order of the learned Single Judge and restore that of the trial Court. The plaintiffs will be entitled to the costs of this Court.

Bishan Narain, J.

BISHAN NARAIN, J.—I agree.

REVISIONAL CRIMINAL

Before Falshaw, J.

SIBU AND DARSHAN,—*Convicts-Petitioners*

versus

THE STATE,—*Respondent*

Criminal Revision No. 52 of 1954

1954

May, 27th

Punjab Excise Act (I of 1914)—Sections 61 and 69-A —Person found guilty of working an illicit still—Proper sentence to be imposed indicated.

Held, that although regarding many kinds of offences it is not possible to lay down any hard and fast standards of punishment, it is necessary in the case of offences like the distillation of illicit liquor to maintain some consistency in the matter. In fact the actual working of an illicit still is one of the most serious offences under the Excise Act, and generally speaking is more serious than merely being found in possession of illicit liquor or of materials used in its preparation. The maximum sentence of imprisonment permitted by the section is two years, and although it is not necessary to impose the maximum sentence even for working an illicit still, especially on a first conviction, the standard sentence for such an offence is one year's imprisonment to which should be added an order for furnishing security under section 69-A covering some period after release from prison. The Sessions Judges should not depart from these standard practices in appeals in cases under section 61 of the Punjab Excise Act without very special reasons.

Petition under section 439 of Criminal Procedure Code for revision of the order of Shri *Sundar Lal, Additional Sessions Judge, Jullundur, dated the 14th December, 1953, modifying that of* Shri *Sukhdev Prashad, Magistrate, Ist Class, Jullundur, dated the 30th September, 1953, convicting the petitioners.*

H. S. GUJRAL, for Petitioners.

K. S. CHAWLA, Assistant Advocate-General, for Respondent.

JUDGMENT

FALSHAW, J. This is a revision petition by two brothers, Sibu and Darshan, who were convicted by a Magistrate at Jullundur under section 61 of the Punjab Excise Act and sentenced to nine months' rigorous imprisonment each and also ordered to furnish security under section 69-A of the Act in a sum of Rs. 1,000 for one year following their release. In appeal their sentences were reduced by the Additional Sessions Judge to six months' rigorous imprisonment, and the order Falshaw, J.

Sibu and Darshan
v.
The State

Falshaw, J.

under section 69-A of the Act was set aside. When the revision petition came up before me for admission on the 15th of January, 1954, I ordered the issue of notice to the petitioners for the enhancement of their sentences.

The facts of the case are quite simple. In the course of a raid carried out on the house of the accused in the afternoon of the 2nd of August, 1953, by a party headed by Excise Sub-Inspector Mukand Singh and Police Assistant Sub-Inspector Jagir Singh, P.W.s, the two accused, of whom Sibu is aged 35 and Darshan 20, were found actually distilling illicit liquor by means of a working still which had been set up in one of the rooms of the house. It is alleged that when the raiding party arrived the accused tried to escape and received a few minor injuries in the course of their capture. The receiver of the still which was actually in operation was found to contain twenty ounces of illicit liquor, and three full bottles of illicit liquor were also recovered.

The defence of the accused was of the usual unconvincing type in such cases, to the effect that the still was not in their house but in the house of their brother and that they themselves were not present but were brought from their well outside the village. I agree with the Courts below in rejecting this defence and hold that the petitioners were rightly convicted.

As regards the question of enhancement of the sentences I issued notice in this behalf because, in my opinion, although regarding many kinds of offences it is not possible to lay down any hard and fast standards of punishment it is necessary in the case of offences like the distillation of illicit liquor

to maintain some consistency in the matter. In fact the actual working of an illicit still is one of the most serious offences under the Excise Act, and generally speaking is more serious than merely being found in possession of illicit liquor or of materials used in its preparation. The maximum sentence of imprisonment permitted by the section is two years, and although it is not necessary to impose the maximum sentence even for working an illicit still, especially on a first conviction, the standard sentence for such an offence throughout my experience of these cases has been one year's imprisonment, and in recent years since the introduction of section 69-A into the Act, it has also been almost a standard practice to require convicted persons to furnish security under this section covering a period after their release from prison.

In fact, in the present case there was very little departure from these accepted standards by the trial Court, which sentenced the petitioners to nine months' imprisonment and ordered them to furnish bonds under section 69A. It was because the learned Additional Sessions Judge in appeal chose to reduce the sentences of imprisonment and to set aside the order under section 69A without, as far as I can see, any reason whatever that I issued notice for enhancement in the present case, mainly for the purpose of pointing out that Sessions Judges should not act in this manner in appeals in cases of this kind without very special reasons. As regards the present petitioners it has been pointed out to me that assuming they have earned the normal period of remission during their term of imprisonment they must by now have completed their sentences and been released. On this account I refrain from enhancing the sentence and simply dismiss their revision petition.