

Emperor Vs. Waman Dhanraj

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Court : Mumbai

Decided On : Jan-22-1908

Reported in : (1908)10BOMLR171

Judge : Chandavarkar and ;Knight, JJ.

Appeal No. : Criminal Appeal No. 405 of 1907

Appellant : Emperor

Respondent : Waman Dhanraj

Disposition : Appeal dismissed

Judgement :

Chandavarkar, J.

1. The evidence in the case is not so clear as to warrant our upsetting the order of the Magistrate so far as the offence charged against the accused under Sub-clause (6) of Clause (1) of Section 43 of the Abkari Act is concerned. The question then is, whether the accused ought to be convicted under Section 47 of that Act. The evidence establishes the fact, and it is not disputed, that liquor was found in the shop at Jalgaon in respect of which the accused held a license, and that, that liquor was larger in quantity than was authorised by his license.

2. It is also proved and in fact it is admitted before us that it was accused No. 1 in whose name the permit was taken for the liquor; that the permit authorised its being sent to the shop of the accused at Kandori and that, accused No. 5 was employed in the matter and acted as the servant of accused No. 1.

3. Under these circumstances Section 53 of the Abkari Act required accused No. 1 to prove satisfactorily that he was not-liaible for the liquor found in his shop at Jalgaon. The Abkari Act is a Licensing Statute, with reference to which the principle is ' that licenses to keep ale houses are only granted to persons of good personal character, and it is obvious that the object of so restricting the grant of licenses would be defeated if the licensed person could, by delegating the control and management of the house to another person who was altogether unfit to keep it, free himself from responsibility for the manner in which the house was conducted': per Cave J., concurred in by Collins J. in *Masse v. Morriss* [1894] 2 Q. B. 414. Mens rea is not required where the acts prohibited by a statute are not criminal in any sense, but are prohibited in the public interest under a penalty; per Lush J. in *Davies v. Harvey* (1874) L.R. 9 Q. B. 488 and *Sherras v. De Rutzen* [1895] 1 Q, B. 918. And this principle is substantially adopted in Section 53 of the Abkari Act, with this exception, however, that it is open to the license holder, according to the section, to prove facts to show that he is not liable for his servant's default or act. Here accused No. 1 has not done that.

4. We convict the accused and sentence him to pay a fine of Rs. 150 ; in default he shall suffer simple imprisonment for one month.