

**In Re: Limda Koya**

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**SooperKanoon Citation :** [sooperkanoon.com/332310](http://sooperkanoon.com/332310)

**Court :** Mumbai

**Decided On :** Jul-06-1885

**Reported in :** (1885)ILR9Bom556

**Judge :** Nanabhai Haridas, ;W. Wedderburn and ;Bart, JJ.

**Appellant :** In Re: Limda Koya

**Judgement :**

**Nanabhai Haridas, J.**

1. In prosecutions under Section 43 of the Bombay Abkari Act'; V of 1878, a presumption under Section 53 of the Act, no doubt arises that the person found in possession of such materials 'as are ordinarily used in the manufacture of liquor' was in possession of them for the' purpose of manufacturing liquor [section 43, Clause (f)]. But such a presumption under that section arises only when the accused is 'unable to account satisfactorily' for his possession of them.

2. In the present case it appears, from the Appellate Court's judgment, that the accused is a dealer in mowra flowers, and the only act found against him is that of having sold the mowra flowers to Khushal Vajiria, who made an illegal use of them. It is not alleged that he has used such flowers for the purpose of manufacturing liquor. Being a dealer, his possession, of mowra flowers in the course of his business is satisfactorily accounted for. The presumption, therefore, under Section 53 cannot be said to arise in this case, and it lies upon the

prosecution-no such presumption arising - to make out that the accused had in his possession mowra flowers for the manufacturing of liquor. The prosecution has failed to make it out,

3. The Magistrate from the evidence of the liquor-contractor's man, that illicit distillation is common in the Bulsar Taluka, presumes that the accused in this case kept the mowra flowers in his possession with the intention of using them for illicit distillation by himself or by other persons purchasing the same from him. 'We are unable to follow his reasoning. Also it is evident that the accused cannot be held responsible for the use made by purchasers of the materials after they have passed from his control.

4. The statement of the Magistrate in his judgment, that the mowra flowers are not used in the district as food for men or animals, is contrary to the statement on oath of witness No. 23 (Chotalal Vasandas).

5. The conviction and sentence are reversed. Fine, if levied, to be repaid.

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