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Court : Mumbai

Decided On : Apr-13-1927

Reported in : AIR1927Bom518; (1927)29BOMLR1012; 103Ind.Cas.834

Judge : Fawcett and Patkar, JJ.

Appeal No. : Criminal Application for Revision No. 41 of 1927

Appellant : Emperor

Respondent : S.V. Marathe

Judgement :

Patkar, J.

1. In this case, the accused has been tried on a charge of having committed an offence punishable under Section 45(c) of the Bombay Abkari Act (Bom. Act V of 1878) for violation of the conditions Nos. 5, 9 and 11 of the license. The accused has been found guilty of that charge and convicted and sentenced to pay a fine of Rs. 30, in default to suffer simple imprisonment for ten days....

2. The next question is whether the accused is shown to have violated conditions 5, 9 and 11 of his license. The 6th condition is that the licensee shall not sell ordinary denatured spirit except in full corked and capsuled quart or pint bottles. The evidence of Mr. Reporter on this point is that he found while searching the

shop that the bottles in which the spirit was kept were not quart bottles, but that they were of larger capacity, that nearly two-thirds of the bottles were filled, and that the bottles were sealed, but were not capsuled. The bottles in the shop were proved by him to be not quart or pint bottles and were not capsuled. There is also the admission of the accused in Ex. 2C that the bottles were not capsuled. But the condition No. 5 requires that the licensee shall not sell ordinary denatured spirit except in full corked quart or pint bottles. The accused is found in his shop to have kept for sale ordinary denatured spirit in bottles, which were not full corked quart or pint bottles. The accused, therefore, cannot be said to have violated the condition, because it is not proved that he sold ordinary denatured spirit in the forbidden bottles. We think, therefore, that the accused's conviction for violation of condition 5 is erroneous....

3. We think, therefore, that the conviction of the accused for breaking two conditions of the license is correct. We, therefore, confirm the conviction of the accused for violating conditions 9 and 11 of the license. We reduce the sentence of fine to Rs. 20 and order the excess of Rs. 10 if paid to be refunded.

Fawcett, J.

4. I would only add that the word 'sell' in condition 5 of the license cannot, in my opinion, be properly construed as covering words such as 'or keep for sale.' 'Sell' obviously means more than keeping for sale. Thus Section 273 of the Indian Penal Code says not only 'whoever sells' but also 'or offers or exposes for sale, as food or drink, any article, which has been rendered or has become noxious &c.;' Similarly the provisions of Section 293 not merely say 'sells', but use other expressions such as 'distributes' and 'exhibits.' Condition 3 of the form of license refers to drums and bottles, &c.; 'kept for sale', so the distinction is one that is itself made in the conditions; and if condition 5 is meant to cover the case of a licensee keeping spirit for sale, the wording of the condition ought to be amended.