

State Vs. Pandu Janu

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Court : Mumbai

Decided On : Oct-14-1955

Reported in : AIR1956Bom173; 1956CriLJ384

Judge : Dixit and ;Vyas, JJ.

Acts : [Bombay Prohibition Act, 1949](#) - Sections 2(12), 66, 85(1) and 85(3)

Appeal No. : Criminal Appeal No. 894 of 1955

Appellant : State

Respondent : Pandu Janu

Advocate for Def. : P.S. Joshi, Adv.

Advocate for Pet/Ap. : A.A. Mandgi, Asst. Govt. Pleader

Judgement :

Vyas, J.

1. This is an appeal by the state of Bombay against a Judgment of the Judicial Magistrate, First class, Karjat by which judgment the learned Magistrate acquitted the respondent Pandu Janu Katkari of offence under Section 66(b) and Section 85, Sub-section (1), clauses (1) and (3) of the Prohibition Act.

2. The learned Assistant Government Pleader appearing for the State of Bombay does not challenge the order of acquittal so far as the charge under Section 66(b) of the Bombay Prohibition Act is concerned. What is challenged before us is the acquittal of the respondent in respect of the offence under Section 85, Sub-section (i), clauses (1) and (3) of the Bombay Prohibition Act. In acquitting the respondent of this charge, the learned Magistrate has observed in the course of Judgment:

'The condition of the accused that he was unable to take care of himself is secondary matter as it has in the first instance to be proved that the accused had consumed liquor which fell under the prohibition category'.

In other words, the learned Magistrate took the view that as the prosecution has failed to prove that the drunkenness of the respondent had arisen as a result of his having drunk prohibited liquor, respondent could not be convicted. This view of the learned Magistrate is clearly unsustainable in view of the decision of this Court in -- 'State v. Trimbak Dhondur' 57 Bom RL 541 (A). It was held by the Court in that case that the expression 'drunk' in Section 85(1)(3) of the Bombay Prohibition Act was not synonymous with the expression 'to drink' defined in Section 2(12) of the Act.

The expression 'drunk' in the section must be given its plain natural meaning which it has in the English language viz., as overcome by alcoholic liquor or intoxicated. It was pointed out by the Court that a person would commit an offence under Section 85(1) of the Bombay Prohibition Act even if he drank permitted liquor, if he was drunk and incapable of taking care of himself or if he behaved in a disorderly manner or if he was intoxicated.

3. In this particular case there is no doubt that the respondent was unable to take care of himself. There is medical evidence given by the Medical Officer of the Dispensary at Khalapur to the effect that the respondent had consumed alcohol and was unable to take care of himself. It would be evident from the judgment of the learned trial Magistrate that he too took the view that the condition of the respondent was such that he was unable to take care of himself.

In these circumstances, having regard to the decision of this Court in the abovementioned case, we are of the view that the order of acquittal passed by the learned Magistrate in respect of the charge under Section 85(1) cannot be sustained. The acquittal of the respondent so far as the charge under Section 85, Sub-section (1), Clauses (1) and (3) is concerned is set aside, and we convict the respondent under Section 85, Sub-section (1), Clauses (1) and (3) and sentence him under Clause (1) of Section 85(1) to suffer seven days' simple imprisonment and also to pay a fine of Rs. 25/- or, in default of payment of fine, to suffer seven days further simple imprisonment.

Although we convict the respondent both under Clauses (1) and (3) of Sub-section (1) of Section 85, we pass a sentence upon him only under Clause (1) of Sub-section (1) of Section 85 and we do not pass a separate sentence under Clause (3) of Sub-section (1) of Section 85.

4. Appeal allowed.

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