

State Vs. Ganpat Vithoba

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Court : Mumbai

Decided On : Nov-11-1955

Reported in : AIR1956Bom202; 1956CriLJ486

Judge : Bavdekar, J.

Acts : Bombay Prohibition Act, 1949, Sections 66; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 439

Appeal No. : Criminal Revn. Appln. No. 1086 of 1955

Appellant : State

Respondent : Ganpat Vithoba

Advocate for Def. : M.S. David, Adv.

Advocate for Pet/Ap. : Govt. Pleader

Judgement :

ORDER

1. This is an application for enhancement of the sentence passed against the accused person who has been convicted for a second time upon an offence under Section 66(b), Bombay Prohibition Act, 1949.

2. The prosecution case was that on 15-12-1954 the accused got down at the Dadar Station from the Borivali local and was arrested and searched in the

presence of two panchas and the police found one cycle tube containing 24 drains of liquor tied around the waist of the accused. It was seized under a panchnama. The opponent was then prosecuted.

3. His defence was that nothing was found on his person. The police arrested him that morning at Kalina when he was drunk. He was brought down to Dadar and the police foisted a case against him.

4. Now, the case against the accused rested upon the evidence of a police constable and a panch Kashinath Mahadeo. Now the criticism which has been made of this evidence is that the panch appears to be a railway license coolie; but that is not an adequate reason for not believing him. It is said that the railway licensed coolies are under the thumbs of the police for the reason that their licences are issued only upon the recommendation of the police. But I find no evidence that the licences are issued upon the police recommendation.

As against this the opponent examined one witness who said that he was arrested on the morning of that day at Kalina. But it is obvious that the evidence which was adduced on behalf of the prosecution is far more trustworthy than this evidence, and the former negated the latter.

5. The opponent was therefore rightly convicted. The learned Magistrate did not give him the minimum sentence of six months' imprisonment and Rs. 1000/- fine because the accused had prayed for mercy and pleaded poverty though the quantity of liquor was also small. It is impossible to accept however that the quantity of liquor which was found in this case was small, because it is admittedly 24 drams of liquor.

The first offence of which the opponent was convicted was an offence of manufacturing liquor and of being in possession of liquor. It does not appear as if the opponent was keeping in his possession some liquor for his own purpose to drink. The opponent seems to be trafficking in liquor. This does not appear to be a case in which there are any good reasons why the minimum sentence should not be imposed.

6. I enhance the sentence passed upon the opponent to six months' rigorous imprisonment and a fine of Rs. 1,000/- in default rigorous imprisonment for one month more.

7. Sentence enhanced.

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