

State Vs. Meheub Maulabux

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Court : Mumbai

Decided On : Oct-11-1955

Reported in : AIR1956Bom270; 1956CriLJ505

Judge : Chainani and ;Gokhale, JJ.

Acts : [Bombay Prohibition Act, 1949](#) - Sections 85(1)

Appeal No. : Cri. Appeal No. 883 of 1955

Appellant : State

Respondent : Meheub Maulabux

Advocate for Def. : S.J. Sheth, Adv.

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

Judgement :

Chainani, J.

1. This is an appeal by the State against the acquittal of the respondent, who was prosecuted under Section 85(1), Bombay Prohibition Act.

2. The evidence of Police Head Constable, Mohanlal shows that on 16-12-1954, the respondent was found drunk on a public road and, that he was then unable to take care of himself. He called the Punchas and made a Panchnama Ex. 1-A, in

which the Panchas noted the symptoms found on the respondent. We would not rely on this Panchanama, as none of the Panchas has been examined. The respondent was immediately sent to a doctor, who has described the symptoms found on the respondent.

The certificate issued by him shows that the respondent was smelling of liquor, that he was unconscious, that his eyes were congested, that his 'pupils' were dilated and that he could not take care of himself. The doctor has also stated that the respondent was suffering from alcoholic intoxication. The respondent in his statement stated that he had not been arrested on the public road, but in his house. There is, however, no reason to disbelieve the evidence of Head Constable Mohanlal on this point. The respondent has also stated that he had consumed tincture Krumeria, suggesting thereby that he had taken some 'medicinal' preparation.

The learned Magistrate acquitted him on the ground that the prosecution had not proved that what the respondent had consumed was prohibited liquor. The view taken by the learned Magistrate on this point is not correct in view of the decision of this Court in 'State v. Trim-bak Dhondu' 57 Bom. L.R. 541 (A), in which it has been held that a person would commit an offence under Section 85(1), Bombay Prohibition Act even if he drinks permitted liquor, if he is found in a public place drunk and incapable of taking care of himself and that the word 'drunk' means overcome by alcoholic liquor or intoxicated.

3. On the evidence, there can be no doubt that the respondent was found drunk on a public road and that he was then incapable of taking care of himself. Even if he had consumed tincture Krumeria as he had stated, there is no evidence to show that he had taken it for any medicinal purpose, for the respondent does not say that he was suffering from any illness, which made it necessary for him to take such a medicinal preparation. He has also not examined any doctor. We, therefore, do not accept the contention that the respondent consumed tincture Krumeria for a medicinal purpose.

4. The order passed by the learned Magistrate acquitting the respondent is, therefore, set aside. We convict him under Section 85(1), Bombay Prohibition Act.

5. As regards the sentence the offence was committed by the respondent several months ago. He does not also appear to have any previous conviction. No useful purpose would, therefore, be served by sending him to jail. We convict the respondent under Section 85(1), Bombay Prohibition Act and sentence him to one day's simple imprisonment and a fine of Rs. 25/-. In default of payment of fine, the respondent should undergo one week's rigorous imprisonment. One month's time is given to the respondent to pay the fine.

6. Appeal allowed.

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