

Lingappa and anr. Vs. State of Mysore

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Court : Karnataka

Decided On : Jun-13-1955

Reported in : AIR1955Kant116; AIR1955Mys116; 1955CriLJ1272

Judge : Padmanabhiah, J.

Acts : Mysore Prohibition Act, 1948 - Sections 4, 4(1) and 32; [Constitution of India](#) - Article 14; Agricultural Rents Control Act; [Evidence Act, 1872](#) - Sections 101, 102 and 103

Appeal No. : Criminal Revn. Petn. No. 405 of 1954

Appellant : Lingappa and anr.

Respondent : State of Mysore

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : M. Sadanandaswamy, Adv.

Judgement :

ORDER

1. This is a revision petition preferred by petitioners 1 and 2 against the judgment of the learned First Class Magistrate, Tumkur, in Criminal Appeal No. 61 of 1953, confirming that of the learned Second Magistrate, Tumkur, in C. C. No. 2066/52-53, convicting them of offences under Ss. 4(1) (a) and 4(1) (g), Mysore Prohibition

Act and sentencing each, of them to undergo rigorous imprisonment for two months under each count and directing that the sentences should run consecutively.

2. The case for the prosecution was that on 3-6-1952 these petitioners were found in unlawful possession of I. D. arrack and materials used for the manufacture of I.D. arrack, in the house of A2 occupied both by A.1 and A2 at Millennially in Gubbi Taluk and that they thereby committed offences under Ss. 4(1) (a) and 4(1) (g) Prohibition Act. The petitioners pleaded 'not guilty' but the learned trial Magistrate ultimately, convicted and sentenced them as stated above.

The petitioners took this judgment in appeal to the learned First Class Magistrate, Tumkur, who confirmed the conviction and sentence and dismissed the appeal, As against the latter decision, this revision petition is preferred.

3. The main point that arises for consideration is whether there are sufficient materials to interfere with the judgment of the lower Courts. The learned counsel for the petitioners attacked the judgment of the lower Courts on four grounds, viz.

(1) that the Mysore Prohibition Act is void inasmuch as it offends the provisions of Article 14 of the Constitution;

(2) that the prosecution had not proved that the arrack found in the house of the petitioners was a prohibited liquor;

(3) that the search of the petitioners' house is illegal as there was no warrant issued for the said search; and

(4) that the prosecution has not proved that the house wherein the arrack and the other materials were found belongs to the petitioners. I would like to deal with each of these contention separately.

4. It appears to me that none of the grounds of attack is tenable or sound. As regards the last contention that the house wherein the arrack and other materials were found has not been proved to be that of the petitioners I should say without the least hesitation that there is absolutely no substance in it.

(His Lordship after discussing the evidence-held that the accused were in unlawful possession of the articles in their house and proceeded:)

5-6. There is 'equally no substance in the contention that the arrack found in the house of the petitioners has not been proved to be a prohibited liquor. No doubt it has to be conceded that the burden of proof is heavily on the prosecution to 'establish that the articles alleged to have been seized are prohibited-articles.

(On a consideration of the evidence it was held that the lower Courts were right in coming to the conclusion that the liquid contained in M. Os. 2 and 3 was I.D. arrack possessed by the petitioner without a permit. His Lordship then proceeded)

7. The next argument advanced by the learned counsel for the petitioners was that the search itself is illegal inasmuch as no warrant was obtained by P. W. 5 before effecting the search. It is not correct to say that a search should always be preceded by a warrant authorising the search. Powers of entry and search without a warrant have been held to be quite valid under certain circumstances under Section 32, Prohibition Act. P. W. 5 'has sworn that the matter was very urgent and that therefore he immediately proceeded to raid the house of the petitioners without obtaining a warrant. Therefore I agree with the findings of the two Courts below that the search is legal.

8. Coming to the more important point urged on the side of the petitioners that the Prohibition Act is void for the reason that it offends the provisions of Article 14 of the Constitution, I am of opinion that the said contention is devoid of substance or force. It is argued for the petitioners that the Act is made applicable only to the Districts of Kolar, Chitaldrug and Tumkur and not to the other Districts and that the people belonging to these Districts have been discriminated against.

It was also contended that under Section 1(3) (b) the Government has been given arbitrary powers to extend the Act to any area on such date as the Government may by notification appoint, and that these provisions contravene Article 14 of the Constitution. What we have to consider is whether there is any merit in these contentions. It seems to me that the contention urged is not sound.

9. Article 14 of the Constitution runs thus:

'the State shall not deny to any Person equality before the law or the equal protection of the laws within the territory of India.'

The principle underlying Article 14 of the Constitution has been clearly explained by the Supreme Court in the three cases reported in--'State of West Bengal v. Anwar Ali Sarkar', : 1952 CriLJ510 (A), -- 'Kathi Raning Rawat v. State of Saurashtra : 1952 CriLJ805 (B), and -- 'Kedar Nalh v. State of West Bengal', : 1953 CriLJ1621 (C), The first two cases were fully considered by their Lordships of the Supreme Court in the third case i.e., : 1953 CriLJ1621 (C), wherein their Lordships have observed as follows:

' Now, it is well settled that the equal protection of the laws guaranteed by Art, 14 of the Constitution does not mean that all laws must be general in character and universal in application and that the State is no longer to have the power of distinguishing and classifying persons or things for the purposes of legislation. To put it simply all that is required in class or special legislation is 'that the legislative classification must not be arbitrary but should be based on an intelligible principle having a reasonable relation to the object, which the Legislature seeks to attain.

If the classification on which the legislation is founded fulfils this requirement, then the differentiation which the legislation makes between the class of persons or things to which it applies and other persons or things left outside the purview of the legislation cannot be regarded as a denial of the equal protection of the law, for, if the legislation were all-embracing in its scope, no question could arise of classification being based on intelligible differentia having a reasonable relation the to legislative purpose.

The real issue, therefore, is whether having regard to the underlying purpose and policy of the Act as disclosed by its title, preamble and provisions... classification.... can be said to be unreasonable or arbitrary and therefore violative of the equal protection clause'

Again, in the course of the same judgment, their Lordships have observed as under:

'If the impugned legislation indicates the policy which inspired it and the object, which it seeks to attain, the mere fact that the legislation does not itself make a complete and precise classification of the persons or things to which it is to be applied, but leaves the selective application of the law to be made by the executive authority in accordance with the standard indicated or the underlying policy and object disclosed is not a sufficient ground for condemning it as arbitrary and, therefore, obnoxious to Article 14.

In the case of such statute it could make no difference in principle whether the direction which is entrusted to the executive Government is to make a selection of individual cases or of offences, classes of offences or classes of cases. For, in either case, the discretion to make the selection is a guided and controlled discretion and not an absolute or unfettered one and is equally liable to be abused, but as has been pointed out, if it be shown in any given case that the discretion has been exercised in disregard of the standard or contrary to the declared policy and object of the legislation, such exercise could be challenged and annulled under Article 14 which included within its purview both executive and legislative acts.'

10. Thus it is seen that the principle enunciated by their Lordships goes to indicate that there is no substance in the contention that an Act or enactment would be invalid if the enactment is not put into force in the entire State and if it is given effect to only in selected places.

11. The same view has been expressed by their Lordships of the Supreme Court in the cases so-ported in -- 'Sakhawant Ali v. State of Orissa', (S) AIR 1935 S.C. 166 (D), and -- 'Budhan Choudhry v. State of Bihar', (S) : 1955 CriLJ374 (E). In this connection, I would like to refer to some cases of the other High Courts in the Indian Union. In the case reported in -- 'Bhaurao Atmaram v. Sub-Divisional 'Officer, Chanilur-Morsi', (S) AIR 1955 Nag 1 (FB) (F), it is observed by a Full Bench of the Nagpur High Court that it is not necessary for a law to be valid that it must operate in the entire territory of the State, that a State is not prevented from

adopting any system of laws it sees fit for all or any part of its territory and that a State is not compelled to extend application of any particular law to all classes of subjects or to all territories within the jurisdiction of the State.

Again the Madras High Court has taken a similar view in the decision reported in -- In re 'B. N, Ramakrishna Naidu', (S) : AIR1955 Mad100 (G), and the Hyderabad High Court in the case reported in -- 'Firm Soma Rajaiah v. Sales Tax Officer, Secunderabad', AIR 1954 11 yd 50 (H). So, what we have to see in such cases is whether the classification is arbitrary and if it is based on a principle which has no relation to the object which the Legislature seeks to attain by enforcing an enactment.

If it is not arbitrary and if the principle on which the classification is based has a reasonable relation to the object which the Legislature seeks to attain, then it should be held that such an enactment is valid and does not offend Article 14 of the Constitution.

12. There is no force in the contention that the classification in this case is arbitrary and that it has no reasonable relation to the object which the Legislature seeks to attain. The preamble to the Mysore Prohibition Act provides as follows:

'WHEREAS it is expedient, as early as possible, to bring about the prohibition except for medicinal, scientific or industrial or such like purposes of the production, manufacture, possession, export, import, transport, purchase, sale and consumption of intoxicating liquors and drugs in Mysore;

And whereas it is desirable to give effect to the above mentioned policy by introducing it in certain selected areas in Mysore and to utilise the experience gained therein for extending it to the other areas thereof;.'

The preamble itself indicates the principle which] inspired the passing of the Prohibition Act and also the principle involved, and the purpose for which the Act has been made applicable, in the first instance, only to three Districts in the State. Some particular areas have been selected as an experimental measure and the experience gained thereby has to be made use of in extending the Act to other

areas. The indication is that if the prohibition succeeded in those Districts, Government might introduce it to other places.

13. My attention was drawn' by the learned counsel for the petitioners to a case reported in - 'Madhosingh v. State of Rajas than', (I), In that case, the Agricultural Rents Control Act has been held void by the Rajas than High Court as offending Article 14 of the Constitution. It appears to me that the facts in that case are not identical with those in the present case. As observed by their Lordships in that case, the Act nowhere indicated the principle which inspired the passing of the Act or any thing to serve as a guide to control the discretion of the State Government regarding the application of the Act to any particular area. They have also observed that the Act nowhere indicates the object which the Legislature sought to attain.

Even the principle propounded by their Lordships of the Supreme Court in the case reported in -- 'State of Rajasthan v. Rao Manohar Singhji', : [1954]1SCR996 (I), cannot be made applicable to this case where the facts are entirely different. From a consideration of the evidence adduced in the case and the case law referred to above, it appears to me that the decision of the Courts below has to be upheld.

14. The sentence passed by the learned trial Magistrate is by no means severe. But I find that there was no occasion for him to have directed the sentences to run consecutively. I direct that the sentences do run concurrently. With this modification in the sentence, the petition is liable to be dismissed.

15. In the result, except for the modification in the sentence indicated above, this revision petition stands dismissed. The petitioners will surrender themselves to the bail bonds and undergo the unexpired portion of their sentences.

16. Revision dismissed.