

Puttaiah (K.N.) Vs. State of Mysore

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Court : Karnataka

Decided On : Jun-08-1961

Reported in : (1961)IILLJ589Kant

Judge : M. Sadasivayya, J.

Appellant : Puttaiah (K.N.)

Respondent : State of Mysore

Judgement :

ORDER

M. Sadasivayya, J.

1. This revision petition is directed against the conviction of the petitioner, who was the accused in C.C. No. 5028 of 1959 on the file of the Second City Magistrate, Mysore. The accused was a brass and copperware merchant in Mysore. The charge against the accused was that at about midnight, on 31 December 1958, the accused had kept open his shop and was actually found to be loading a lorry with bags containing vessels. It was alleged that he had thereby committed an offence punishable under Section 45(1) read together with Section 7(1) of the Mysore Shops and Establishments Act, 1948. The learned magistrate found the accused guilty of the offence and has sentenced him to pay a fine of Rs. 25 and in default to suffer simple Imprisonment for one week. Aggrieved by mete said conviction and sentence, the accused has filed this revision petition.

2. Sri V.K. Govindarajulu who has appeared for the petitioner has argued that even if the whole of the prosecution case is accepted, it has not been established that the shop of the petitioner had been 'opened' within the meaning of Section 2(10) of the Mysore Shops and Establishments Act, 1948. In order to properly appreciate the force of the learned Advocate's contention, it will be necessary to set out the relevant portion of Section 7 and also Section 2(10). The relevant portion of Section 7 is as follows:

7(1) Save as provided by or under any other enactment for the time being in force, no shop shall on any day be opened earlier or closed later than such hour as may be fixed by the Government, by a general or special order in that behalf.

Section 2 deals with definitions; Section 2(10) is as follows:

2(10) 'opened' means opened for the service of any customer.

The argument of Sri V.K. Govindarajulu is that it has not been proved by the prosecution that the shop of the petitioner had been 'opened' at the time noted in the charge (i.e., at about midnight of 31 December 1953), for the service of any customer.

3. Having regard to the definition in the Act of the word 'opened,' it is quite clear that the mere physical opening of the doors of the shop does not constitute a contravention of the Act; for the opening to be a contravention, the shop should have been opened for the service of any customer. It is fairly conceded by Sri G. Shankar chetty, the learned Additional Assistant Advocate-General that there is no evidence to show that the shop of the petitioner had been opened at that time for the service of any customer. This contention appears to have been advanced even before the learned magistrate. But, Instead of pausing to consider the merits of this contention, the learned magistrate summarily brushed it aside with the following observation:

There is no substance in this argument for the simple reason that the loading of lorry is not to throw away those vessels, and they were found loading to transport) them to some place for the purpose of business.

4. This is an ill-considered and a hasty observation. The mere fact that the shop had been opened and that a lorry was being loaded with vessels, did not constitute an infringement of the provisions of Section 7, when there was no material to show that it was for the service of any customer that the shop had been so opened.

5. There is not even an allegation by the prosecution, that the petitioner's shop had been opened for the service of any customer. Under these circumstances, the fact of the petitioner's shop having been opened at that time, does not constitute a contravention of Section 7(1). No offence has been established and the conviction of the petitioner by the lower Court, cannot be sustained. This revision petition is allowed and the conviction and sentence are set aside. The fine amount, if already collected, shall be refunded to the petitioner.

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