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Aithappa Ghannan Vs. State of Mysore

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Court : Karnataka

Decided On : Feb-25-1972

Reported in : 1973CriLJ360

Judge : D. Noronha, J.

Appellant : Aithappa Ghannan

Respondent : State of Mysore

Judgement :
ORDER

D. Noronha, J.

1. The Revision Petitioner was the accused in C.C. No. 1385/1971 on the file of the Judicial Magistrate, First Class. Mangalore. He was convicted of an offence punishable under Section 13(e) read with Section 34 of the Mysore Excise Act. On his admission of guilt he was convicted and sentenced to undergo simple imprisonment for three months and to pay a fine of Rs. 100/- and in default of payment, to suffer simple imprisonment for two weeks more. He went up in appeal to the Sessions Court of South Kanara Division, Mangalore in Criminal Appeal No. 68/71. The Appeal was dismissed. As against that order, the accused petitioner has come up here.

2. The substance of the accusation stated to the accused on 15.8.1971, under Section 242. Cr.P.C. reads as below:

That you on 17.12.1970 at about 2 P.M. at Bengare in Thota village, Mangalore Taluk, were found in possession of a tyre tube containing about 30 bottles of I.D. arrack without permit and thereby you have committed an offence punishable under Section 13(e) read with Section 34 of the Excise Act. Show cause why you should not be convicted.' The words 'I plead guilty' follow. The seal against them recites, inter alia, that the plea of the accused was read over and explained in the language 'Tulu' known to him. The accused has affixed his left thumb mark. That demonstrates that he is illiterate.

3. Sri K.J. Shetty, Petitioner's learned Advocate, assailed the substance of the; accusation on more than one ground, as below. Section 13(e) of the Mysore Excise Act 1965 cannot be invoked as it refers to bottling liquor for sale, the definition clause in Section 2(2) reading 'to bottle' means to transfer liquor from a cask or other vessel to a bottle, jar, flask or similar receptacle for the purpose of sale, whether any process of manufacture be employed or not, and includes re-bottling'. The receptacle here being a tyre tube, and there being no allegation that he was taking the liquor for sale, Section 13(e) of the Mysore Excise Act of 1965 cannot be invoked.

4. As regards Section 34 of the Act, Mr. Shetty's contention is that all the ingredients prescribed by that section are not specified in the substance of the accusation, particularly that the petitioner had knowledge while he was in possession of the tyre tube that its contents were an intoxicant which was unlawfully manufactured.

5. The third submission of Sri Shetty has reference to Section 243, Criminal P.C. He relies particularly on the words 'His admission shall be recorded as nearly as possible in the words used by him.' The language of the petitioner is Tulu. It is one of the dialects of South Kanara District. The trying Magistrate not being a person of that District, presumably was not acquainted with that dialect and the interpretation, if any, to the petitioner must have been made by someone else, presumably a clerk of the Court. The plea recorded is in English. These infirmities

attract the observations made in : 1966 CriLJ66 Kaushalya Das v. State of Madras.

6. I am persuaded to accept the above contentions urged for the appellant.

7. Sri Shetty requests that the case be remanded to the trial Court for a de novo trial according to law. His request is granted. The orders of conviction and sentence passed by the Courts below are set aside. This Revision Petition is allowed, remanding the case to the trial Court for disposal according to law.

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