

**The State of Mysore Vs. Paimlee**

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**Court :** Karnataka

**Decided On :** Feb-24-1971

**Reported in :** 1971CriLJ1462

**Judge :** M.S. Nesargi, J.

**Appellant :** The State of Mysore

**Respondent :** Paimlee

**Judgement :**

ORDER

**M.S. Nesargi, J.**

1. In this petition, the State has challenged the correctness of the sentence passed by the Munisiff-Magistrate, Chittapur, in C. C. No. 164/3 of 1970, 17-3-1970 while convicting the respondent for an offence Under Section 34 of the Mysore Excise Act, 1965 (which will be hereinafter referred to as 'the Act' in the course of this order).

2. The prosecution case is that the respondent, was, on 24-12-1969 at 11-30 a.m., found in possession of one bottle containing 650 milliliters of illicitly distilled liquor and, therefore, had committed an offence punishable Under Section 34 of the Act.

3. The records go to show that when the substance of the accusation was read over and explained to the respondent as per Section 242 of the Criminal P.C., the respondent pleaded guilty and the learned Magistrate accepted the plea and proceeded to convict and sentence the respondent as narrated above.

4. The contention of the State Public Prosecutor is that the learned Magistrate while imposing sentence on the respondent, has overlooked the amended provisions of Section 34 of the Act and that such amendment came into force on 23-12-1969.

5. I find that the Act came to be amended by the Mysore Excise (Amendment) Act, 1970 and such amendment has come into force with effect from 23-12-1969. That goes to show that the amended provisions govern the case on hand because the offence has been committed on 24-12-1969.

6. The final provision in Section 34 of the Act, as it stood prior to the amendment, is as follows:.. on conviction, be punished with imprisonment for term which may extend to six months or with fine which may extend to one thousand rupees, or with both:Provided that the fine, if any, inflicted, shall not be less than four times the amount of duty leviable on such intoxicant.

By virtue of the amendment, the following proviso is substituted for the proviso mentioned above.

Provided that the punishment,...

(i) for the first offence shall be not less than three months' imprisonment and fine of rupees one hundred; and

(ii) \* \*Provided further that the fine inflicted, shall not be less than four times the amount of duty leviable on such intoxicant.

It is clearly seen that the effect of this proviso is to curtail the discretion vested in the courts while deciding the quantum of sentence. The words 'which may' found in penal clause in Section 34 of the Act do indicate that discretion does vest in the courts while deciding the quantum of sentence upto the maximum of six months.

But the proviso mentioned above, clearly restricts this discretion to the passing of a minimum sentence of three months imprisonment and a fine of Rs. 100/- in regard to the first offence. It is hence, to my mind, clear that no court can, while imposing sentence for a first offence Under Section 34 of the Act, award a sentence less than the prescribed minimum of three months' imprisonment and a fine of Rs. 100/-.

7. In the result, this petition is allowed and in lieu of the sentence passed by the Munisiff-Magistrate Chittapur, on 17-3-1970 in C. C. No. 164/3 of 1970, on the respondent, the respondent is sentenced to undergo simple imprisonment for a period of three months and to pay a fine of Rs. 100/- and in default, to undergo simple imprisonment for further period of two weeks.

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