

In Re: K. Johnson

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Court : Andhra Pradesh

Decided On : Oct-19-1955

Reported in : 1957CriLJ1210

Judge : Satyanarayana Raju, J.

Appellant : In Re: K. Johnson

Judgement :

ORDER

Satyanarayana Raju, J.

1. The petitioner has been convicted under Section 4(1) (a) of the Madras Prohibition Act for having been found to be in possession of two gallons of I. D. arrack and was sentenced to undergo rigorous imprisonment for two months by the Additional Sub-Magistrate, Bhimavaram. On appeal, the Sub-Divisional Magistrate, Bhimavaram,, confirmed the conviction and the sentence.

2. In revision, the learned Counsel for the petitioner contends that there were no mediators at the time of the seizure and that the mandatory provisions of Section 103, Criminal Procedure Code, which are made applicable to all searches under the Madras Prohibition Act by reason of Section 34 of the Act, have not complied with.

3. In *Abdullah v. The State* : AIR1951 Mad883 (A), Panchapkesa Ayyar, J., held that it is of the utmost importance that there should be satisfactory evidence before the Court regarding the article seized on a search under the Prohibition Act from each accused person. In that case there was a dispute as to what was seized and the learned Judge held that at least one of the panchayatdars to the search should have been examined in the Court to corroborate the evidence of the search officer. The learned Judge explained this case in an unreported decision in Criminal Revision Case Nos. 1271 to 1276 of 1950 (on the file of the Madras High Court) where he distinguished the earlier decision and held that the rule does not apply to searches conducted in open places.

4. In *Bishnath Rai v. Rex* : AIR1950 All147 (B), Seth, J., held that the provisions of Section 103, I Criminal Procedure Code, are very salutary provisions for the protection of the interests of an accused person and where they are departed from, the burden lies on the prosecution to explain the circumstances under which it was not possible to comply with those provisions. With these observations, I respectfully agree.

5. If the prosecution case were to be accepted the accused was apprehended by the Prohibition Inspector and others who were guarding the route between Vissakoderapalem and Gunupudi when he was coming along with a gunny bag containing a motor tube with two gallons of I. D. arrack. It was 10-30 P. M. when the accused was apprehended. The place where he was apprehended is a jungle. The explanation offered by the prosecution for not complying with the provisions of Section 103, Criminal Procedure Code, is that having regard to the time and the place where the accused was apprehended with the contraband, it was not possible to get ab any mediators. Having regard to the circumstances of the case, I think this explanation is reasonable and satisfactory. The burden of showing why it was not possible to comply with the provisions of Section 103, Criminal Procedure Code, has thus been discharged by the prosecution.

6. In *Satagopala Charlu v. Satrughana*, Benara 23 Mad LJ 445 (C), Alying and Napier, JJ., held that where the officer has given an explanation for the failure to strictly comply with the provisions of Section 103, it does not make the search

illegal. The contention advanced on behalf Of the petitioner, therefore, fails,

7. It is next contended that the sentence of two months rigorous imprisonment is excessive. The defence of the petitioner was that he was all along in his house on the date when he is alleged to have been apprehended and that the case has been falsely foisted against him. This defence has been found to be untrue. Having regard to the circumstances of the case, I do not think that the sentence awarded to the petitioner is excessive. The conviction and the sentence awarded to the petitioner are therefore confirmed and this Criminal Revision Case is dismissed.

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