

Appanna Vs. the State

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Court : Orissa

Decided On : Jul-28-1950

Reported in : AIR1951Ori29

Judge : Ray, C.J.

Acts : Bihar and Orissa Excise Act, 1915 - Sections 47, 57 and 87

Appeal No. : Criminal Rev. No. 7 of 1950

Appellant : Appanna

Respondent : The State

Advocate for Def. : Adv. General

Advocate for Pet/Ap. : M.S. Rao, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Bay, C.J.

1. The petitioner (Ch. Appanna) has been convicted Under Section 47(a), Bihar and Orissa Excise Act, for having in possession and causing the sale of Government licensed liquor in a tati enclosure near the Jyoti Cinema in Berhampur

town, and has been sentenced to pay a fine of Rs. 200, and in default to undergo simple imprisonment for two months.

2. Appanna is admittedly a license-holder for sale of the liquor in Shop no. 2 in Berhampur town.

3. The contentions that are raised in this case are (i) that even if he sold as alleged by the prosecution, at the tati enclosure, he cannot be held to have committed an offence inasmuch as there was nothing in license that it was eon fined to be availed of in any particular part of the town; (ii) that in view of Section 87 of the Act, initiation of the prosecution was bad in law inasmuch as cognisance had been taken on the complaint of the Excise Sub-Inspector who had not been authorised by the Collector within the meaning of the section; and (iii) in relation to sufficiency of the evidence adduced and its proper appreciation and due appraisalment by the Courts below.

4. The third contention should not be entertained as against the concurrent findings of the Courts below in revision.

5. With regard to the first contention, the prosecution should have done well to have produced the license showing that the particular premises, referred to in Section 30 of the Act, were delimited in the license Through Mr. Advocate-General, who was appearing for the State, I directed for the production of the license or its copy from the Berhampur Excise Department. Except a counterfoil which lacks in all details in its particulars, nothing more could be produced. But Mr. Advocate-General has handed over to me a license granted to a re tail-seller of the liquor in Cuttack It appears from that that the specification of the locality in which the retail sale is to take place has been duly incorporated and the same has been indicated by boundaries of the place. That specification of the place while granting a license is a matter of condition and essentiality will appear from the statutory rules (vol. IV, part I, p. 1 of the Orissa Excise Manual) The part is headed 'General condition applicable to vend licenses under the Excise Law'. Paragraph 1 reads:

'A licensee may sell an intoxicant only at the place or on the premises specified in that behalf on the license, and sale by him or on his behalf in any other place is absolutely prohibited.'

6. I would, therefore, hold, agreeing with the Courts below, that the place in which the petitioner was found selling the Government licensed liquor was not the place specified in his license and by doing so he did something which was absolutely prohibited. As to initiation, Schedule 7 says:

'No Magistrate shall take cognizance of an offence referred to -

(a) in Schedule 7.....except on the complaint or report of an Excise Officer or an Officer empowered in this behalf by the Local Government: or

(b) in Schedule 7.....except on the complaint or report of the Collector or an Excise Officer authorised by the Collector in this behalf.'

7. Mr. Rao, the learned counsel for the petitioner, forcibly contends that the offence charged is one within Schedule 7 of the Act and as such the complaint in the case must fulfil the requirements of Section 87 (b). According to his contention, the offence is one under Schedule 7(b), which, Omitting the immaterial portion thereof, would read :

'If any holder of a licence, in any case not provided? for in Section 47, wilfully contravenes any rule made under Schedule 9 or Section 90, or

(c) Willfully does any act, in breach of any of the conditions of the licence, for which a penalty is not prescribed elsewhere in this Act, &c.;

8. We have to read Schedule 7 (a) under which the petitioner has been prosecuted side by side.

It reads :

'If any parson, In contravention of licencegranted under this Act,

(a).....sells any intoxicant, he shall be liable to imprisonment.... or to fine...'

9. Cases covered by Section 47 are excluded from the purview of 57. The crucial position, therefore, is whether the offence in the present case is one under Schedule 7 or Section 57. Section 57 either (b) or (c) refers to such violation of rules or conditions of license as are not elsewhere provided for. This amounts to say that if the offence charged falls Under Section 47 (a), as quoted above, non-compliance of the provisions of Schedule 7, as contended for by the learned counsel for the petitioner, will not vitiate the prosecution. In my judgment, this case comes very clearly and specifically under Schedule 7 (a) and as such does not come under the purview of Schedule 7. There is therefore, no illegality in launching the prosecution. All the contentions advanced by the learned counsel having thus failed the revision fails and is dismissed.

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