

Chela Ram Vs. State of Rajasthan

Chela Ram Vs. State of Rajasthan

SooperKanoon Citation : sooperkanoon.com/754796

Court : Rajasthan

Decided On : Jul-06-1983

Reported in : 1984CriLJ1143; 1983WLN(UC)135

Judge : K.D. Sharma, C.J.

Appellant : Chela Ram

Respondent : State of Rajasthan

Advocate for Pet/Ap. : Mr. S.R. Singhi, Mr. S.R. Singh

Judgement :

ORDER

K.D. Sharma, C.J.

1. This is an application in revision filed by Chela Ram against the judgment of the Sessions Judge, Jalore, dated 18.9.1978. upholding his conviction and sentences under Section 4(2) of the Rajasthan Prohibition Act, 1969, (hereinafter referred to as 'the Act').

2. It will not be out of place to mention that Chela Ram. was prosecuted along with his wife under Section 4(2). of the Act, in the court of Munsif and Judicial Magistrate. Sanchora. The learned Judicial Magistrate convicted Chela Ram and his wife of the said offence and sentenced each of them to undergo rigorous imprisonment for one year and to pay a fine of Rs. 1.000/-. In default of payment of

fine to further suffer simple imprisonment for five months. Aggrieved by their conviction, and sentence. Chela Ram and his wife preferred an appeal in the Court of Sessions Judge, Jalore. The learned Sessions Judge, dismissed the appeal of Chela Ram and partly accepted the appeal of his wife and while maintaining her conviction and sentence of fine, reduced the sentence of one year's rigorous imprisonment, to the sentence of imprisonment till the rising of the court.

3. The wife of Chela Ram, petitioner, has not moved this court in revision. So I proceed to deal with the revision petition of Chela Ram only.

4. Mr. S.R. Singhi, learned Counsel for the petitioner Chela Ram vehemently contended before us that Chela Ram was not present in the house at the time of search. The search of the house was conducted in the presence of his wife Mst. Gomti, As a result of the search about 70 bottles of liquor were recovered from the room and kitchen of the house.

5. According to the submission of Mr. S.R. Singhi, in order to raise a presumption of guilt against the petitioner, it ought to have been made out by the prosecution beyond reasonable doubt ' that he was in possession of the bottles of liquor: recovered on search. Because in cases under the Rajasthan Prohibition Act there cannot be an absolute presumption that the husband must be in possession of everything found inside his house, for the simple reason that the provisions of Section 27 of the Indian penal Code cannot be made applicable to the cases of offences under the Act. in the absence of any specific provision to this effect.

6. Mr. S.R. Singh further contended that the prosecution has led no evidence on the record that Chela Ram had gone out side the village the very day before his house was searched or a day prior thereto, because in the presence, of such proof it would have been easy for the court to presume that the petitioner knew it well that as many as 70 bottles containing liquor were lying in his room and kitchen.

7. Mr. Niyajuddin, learned Public Prosecutor, on the other hand contended that the petitioner being head of the family must be presumed to have been in possession of the bottles of liquor lying in the room and kitchen of his house. According to the submission of the Public Prosecutor, the petitioner was an accessory and he was

rightly held to be in possession of the bottles of liquor.

8. I have considered the rival contentions mentioned above. At the out set, I may observe that the wife of the petitioner was held to have been in possession of the bottles of liquor because in her presence the house was searched and bottles containing liquor were recovered and she was unable to account for their presence in the room and kitchen satisfactorily.

9. It is admitted by the prosecution witnesses themselves that Chela Ram Was not present in his house at the time when it was searched and a good, number of bottles containing liquor were recovered from a room, and the kitchen thereof. The prosecution has adduced no evidence to show that the petitioner had gone outside the village the very day when his house was searched or a day prior thereto. In the absence of any such evidence, it cannot be safely presumed that the petitioner was in possession of everything found inside his house. The possibility of his wife having brought the bottles of liquor and kept them inside the room and kitchen of his house in his absence cannot altogether be eliminated.

10. I agree with Mr. S.R. Singh learned Counsel for the petitioner that possession by a person's wife, clerk, or servant may be held to be equivalent to possession by the person himself, under Section 27 of the Indian Penal Code. But that section extends the meaning of the expression 'possession' for the purpose of offence under the Indian Penal Code in such a manner so as to include the possession of person's wife, clerk, or servant to be ort account of that person.

11. The provisions contained in Section 27 of the. Indian Penal Code are not made applicable to cases or offences under the Rajasthan Prohibition Act. Hence the word 'possess' used in Sub-section 21 of Section 4 of the Act cannot be interpreted to include 'possession' by the petitioner's wife. It is imperative upon the Prosecution to prove beyond reasonable doubt that the petitioner was in conscious possession of the bottles containing liquor which were recovered in his absence from his house.

12. In the instant case there is no such evidence led by the prosecution as may fix the petitioner with the knowledge that he had bottles filled with liquor in a room and

kitchen of his house.

13. Reference in this connection may be made to an authority in *Narendra Nath Mozumdar v. State* AIR 1951 Oil 140 : (1951) 52 Cri LJ 1241 wherein it was held that Section 27 of the Penal Code in terms cannot be made applicable to explain possession under the Arms Act. The relevant observations made by his Lordship P.B. Mukharji, J. in paras 5 and 6 of his judgment are quoted below:

(5) The learned Counsel for the Stair has drawn my attention to Section 27. Penal Code and has argued that under legal advice the wife was let off because in this case the pistol although in the possession of the accused's wife the law under that section is said to provide that such possession should be treated as that of the accused husband. This argument in my judgment suffers from a fallacy. Section 27. Penal Code provides that when property is in the possession of a person's 'wife, clerk or servant on account of that person it is in that person's possession within the meaning of that Code. That is a special definition of the Penal Code, The offence with which I am concerned here is not an offence under the Penal Code but an offence under a special Statute, the Arms Act. In my judgment Section 27, Penal Code in terms cannot be applied to explain possession under the Arms Act.

(6) The concept of possession under the Penal Code which is fully discussed in the Calcutta F.B. decision of '*Emperor v. Fatehchand Agarwalla* (1917) ILR 44 Cal 477 : (1977) 18 Cri LJ 385 is in my opinion not necessarily the same as the concept of possession under the Arms Act. The offence under the Arms Act is possession or control of any arms without, licence. To my mind such a concept of possession under the Arms Act must connote an element of consciousness in the person charged with such offence. A person who is not aware of the possession of a weapon without licence cannot in my view be said to commit an offence under the Arms Act.

14. Consequently, the mere fact that the petitioner was or is the head of the family is not sufficient for a finding that he must have been in conscious possession or control of the liquor contained in the bottles which were found in his house. In this view of the matter the petitioner's conviction and sentences cannot be upheld and

maintained and deserve to be set aside.

15. Accordingly I accept the revision petition filed by Chela Ram. set aside his conviction and sentence under Section 4(2) of the Rajasthan Prohibition Act and acquit him of the said offence. The petitioner is on bail. He need not surrender to his bail bonds which are hereby cancelled. Fine, if paid, will be refunded according to law.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com