

State of Rajasthan Vs. Maliva

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Court : Rajasthan

Decided On : Apr-01-1986

Reported in : 1986WLN(UC)611

Judge : Kishore Singh Lodha, J.

Appeal No. : S.B. Criminal Appeal No. 95 of 1986

Appellant : State of Rajasthan

Respondent : Maliva

Disposition : Appeal dismissed

Judgement :

Kishore Singh Lodha, J.

1. I have heard the learned Public Prosecutor.

2. The learned Magistrate of course appears to be wrong when he says that no excisable article was recovered from the respondent but he was only found in possession of a Jerrycan containing about 49 bottles of illicit liquor and therefore, he can be held guilty only under Section 54(f) and not under Section 54(a) of the Excise Act. Section 54(f) makes the bottling of liquor for the purposes of sale, punishable. It is not case of bottling but is a case of possession of illicit liquor and therefore, the conviction should have been under Section 54(a) of the Excise Act. I

am however, not in agreement with the learned Public Prosecutor that the offence under Section 54(a) is punishable with a minimum sentence of six months. All cases under Section 54(a) are not punishable, only specified cases namely that of possession of workable still or selling or possessing for sale any excisable article in contravention of the provisions of the Excise Act or any rule or order etc. is punishable with the minimum sentence of imprisonment for six months and a fine of Rs. 200/-. Mere possession of illicit liquor does not fall within this proviso to Section 54, unless it is further proved that the possession was for sale. There is no evidence that the respondent possessed the bottles of liquor for sale. In these circumstances the sentence passed by the learned Magistrate cannot be said to be against the proviso nor it can be said to be inadequate.

3. In these circumstances the appeal is rejected.

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