

In Re: Mannen Venkayya and ors.

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Court : Chennai

Decided On : Mar-28-1928

Reported in : (1928)55MLJ712

Appellant : In Re: Mannen Venkayya and ors.

Judgement :

ORDER

Devadoss, J.

1. This is an application to revise the order of the Sub-divisional Magistrate, Bezwada, in Criminal Appeal No. 41 of 1927 affirming the conviction of the petitioners under Section 64 of the Abkari Act. The first point raised before me is that the trying Magistrate, after the close of the case, received from the Sub-Inspector in charge of the prosecution a memo of arguments without notice to the defence and gave judgment. The second point urged is that there is no evidence to connect the 3rd accused with the offence and as regards accused Nos. 1 and 2 they did what they were told to do by accused No. 4, who has been acquitted. The 3rd accused is a license-holder of toddy shop No. 1. Accused 1 and 2 who were coolies were asked to transport some toddy to No. 1 shop. They took the toddy to No. 3 shop, where they were arrested by the Abkari Officer. Their contention that they acted under the orders of accused 4 and that they did not know where toddy shop No. 1 was, was disbelieved by both the Courts. Under Section 55, any one who imports, exports, transports or possesses liquor or any intoxicating drug

without proper license is guilty of an offence under Section 64. The permit, which accused 1 and 2 had, mentioned the place where shop No. 1 was situated. They could not, therefore, be said to have acted bona fide in carrying the toddy to shop No. 3. Therefore they are guilty under Section 64.

2. As regards accused 3, there is no evidence that he either directed accused 1 and 2 or permitted them to take or connived at their taking the toddy to No. 3 shop.

3. The Public Prosecutor relies upon Section 64 and contends that the presumption is that any act done by the servant of a renter or licensee for the benefit of such a renter or licensee would make the renter or licensee liable under the Act. No doubt if the act is one which is done in the course of business, though the act is done by the servant, the master, i.e., the licensee, would be presumed to have given authority under Section 64. But where coolies were asked to take toddy to shop No. 1 and they took it to No. 3 shop, it cannot be said that the renter is liable for any act of theirs, for he could not have presumed or have known that they were going to carry the toddy to No. 3 shop instead of No. 1 shop. As a permit was given and the permit mentioned sufficient particulars as to where the shop was, I do not think that the renter is liable for the deviation of accused 1 and 2 from the instructions given to them by the permit, as well as from the practice they knew was prevailing with regard to the business of accused No. 3. In the light of the evidence adduced, I do not think that accused No. 3 is guilty under Section 64. I, therefore, set aside his conviction. As regards accused Nos. 1 and 2, no doubt as I have observed already, they are guilty under Section 64. But considering the grave irregularity which the Trial Court committed in receiving the memo of arguments on behalf of the prosecution, especially without the knowledge of the accused, the question is whether the conviction ought to be allowed to stand. This Court has condemned in more cases than one the practice of allowing a counsel or a vakil to file a memo of arguments in writing. The practice seems to prevail in several places. The only way to put an end to such practice is by setting aside all the proceedings as being highly irregular. On this ground alone, I set aside the conviction of accused Nos. 1 and 2 and order a re-trial. The learned Public Prosecutor says that the Appellate Magistrate has drawn attention to the irregularity and that is quite sufficient. I do not think that is quite sufficient.

There is often a tendency to add to the notes of argument a few lines here and there and make it the judgment of the Court. Such would not in any sense be the judgment of the Court. I cannot express myself too strongly on this highly improper practice of Courts allowing written notes of arguments to be filed. The attention of the District Magistrate will be drawn to the conduct of the Sub-Magistrate in this case.

4. The fine, if paid, will be refunded to the accused.

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