In Re: Palaniswamy

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SooperKanoon Citation : sooperkanoon.com/780971

Court : Chennai

Decided On : Jul-31-1964

Reported in : 1965CriLJ370

Judge : Anantanarayanan, J.

Appellant : In Re: Palaniswamy

Judgement :
ORDER

Anantanarayanan, J.

1. This revision involves an interesting point whether, under the Madras Prohibition Act as enacted and in the form in which it stands today, a person can be properly convicted under Section 4(1)(j) for consumption of illicit liquor, without the prosecution discharging the burden of proof that the liquor that he had consumed was prohibited, and not of some unprohibited variety. This is not a new problem, and this matter has come up before the courts more than once. I had occasion to deal' with it in Periasami Gounder, in re, 1960 MWN 84 wherein I have referred to the decision of the Supreme Court in Pesikaka v. State of Bombay 1954 MWN 985 and also to the decision, Palani Goundar v. State : AIR1957 Mad546 . In Rathinam v. State 1960 MWN 88 omasundaram J. held, similarly, that the symptoms of dilation of pupils, sluggish reaction of pupils to light, smell of alchohol in the breath, congestion of eyes etc, were not at all conclusive on the point that the liquor

consumed was of the prohibited variety. The learned District Magistrate (Judicial) in the appellate judgment in the present case, referred to three decisions, and then observed that the evidence of the doctor was not necessarily conclusive. Particularly where the doctor examines an alleged drunkard sometime afterwards, his evidence that he was unable to state categorically whether the offender had consumed prohibited liquor, or otherwise, would only be of restricted value; it would only prove, at the highest, that the appellant had consumed alcohol, but would not exclude some other mode of proof by the prosecution that the alcohol consumed was of prohibited variety.

2. In the present case, the prosecution relied upon the evidence of the constable, P. W. 1, who arrested the petitioner (revision petitioner). He smelt the breath of the revision petitioner, and, according to him, he detected the smell of arrack. The doctor examined the accused about three hours later, and, during that interval, the distinctive smell of arrack might have disappeared, according to the reasoning of the learned District Magistrate in appeal. That is no doubt so. But the more important point is, can we accept the testimony of P, W. 1 as sufficient proof that the accused had consumed liquor of the prohibited variety? The defence of the accused was that he had consumed some medicine containing alcohol, which would also explain the symptoms found at the medical examination. Clearly, there is no burden on the accused to prove that he had consumed liquor of unprohibited variety, ac-counting for the symptoms. The prosecution must make out its case, and the burden lies upon the prosecution alone throughout,

3. I am unable to hold that the prosecution has discharged that burden. The argument might be plausible, if the officer (P. W. 1) had been an expert in the detection of the consumption of prohibited or illicit liquor, merely by smelling the breath of a person. It is not even clear that there is such a smell of arrack (prohibited liquor) which is so distinctive, that it cannot be confused with any other smell of alcohol, and even if this be conceded, it would not be adequate. The prosecution must show that it is possible for the trained individual to distinguish that smell from the smell of any other alcoholic preparation, and the officer P. W. 1 must have been a person who has received such a training, before his evidence can be given any weight. Admittedly, there is no such evidence in the record. I am

constrained to award the benefit of tin's substantial doubt to the revision petitioner. The revision is allowed, the conviction and sentence are set aside, and the petitioner is acquitted of the charge under Section 4(1)(j) of the Act. The bail bond, if any, will be cancelled.