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In Re: Bhoopathy

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SooperKanoon Citation : sooperkanoon.com/781848

Court : Chennai

Decided On : Jan-08-1964

Reported in : (1964)1MLJ280

Appellant : In Re: Bhoopathy

Judgement :
ORDER

M. Anantanarayanan, J.

1. This revision proceeding involves a question of some interest with regard to the applicability ofSection 5 of the Madras Prohibition Act to the established facts of this case. As far as the evidence is concerned, we may take it as proved that Head Constable 981 (P.W. 1) stopped and searched the revision petitioner and recovered from his person a bottle (M.O. 1) containing 8 drams of denatured spirit mixed with water which according to the Head Constable (P.W. 1) had been rendered potable. P.W. 1 is corroborated ,by P.W. 2. Further, we have the report of the Analyst attached to the Forensic Science Laboratory to the effect that the liquid contained 37.7 per cent of proved spirit and that it was varnish upon which an attempt had been made as to render it potable by adding water and sodium chloride.

2. Now, under Section 5 of the Act:

Whoever renders or attempts to render fit for human consumption any spirit or preparation containing spirit whether manufactured in India or not, which has been denatured or any preparation containing such spirit or has, in his possession, any spirit or preparation containing spirit in respect which he knows or has reason to believe that any such attempt has been made shall be punished....

the rest of the section, containing the actual punitive provisions does not now concern us.

3. Admittedly the revision petitioner was not detected in rendering, or attempting to render fit for human consumption, the spirit or preparation containing spirit. If he is guilty underSection 5 at all, he is guilty only under the latter part of the section, because he had in his possession a preparation containing spirit, in respect of which an attempt had been made to render it potable by adding sodium chloride and water. Learned Counsel for the revision petitioner takes the point that even the Analyst has not said that the adding of sodium chloride and water to varnish, will necessarily render it fit for human consumption, but that is the implication of the report. This apart, the latter part ofSection 5 further requires that the person in possession of the preparation so rendered potable, must know or have reason to believe that such an attempt had been made. On this aspect, there is no evidence whatever. No inference to that effect can be drawn, in my opinion, from the mere possession of the preparation. For, obviously, the revision petitioner might have been in possession of the preparation thinking it to be illicit liquor, and not necessarily knowing or having reason to believe that it is varnish rendered fit for human consumption by adding a particular solution.

4. In the light of the record, I do not think that the conviction underSection 5 of the Madras Prohibition Act can be sustained. On the contrary, the very facts establish the offence underSection 4(1)(a), namely, of possession of liquor or an intoxicating drug; so much is indisputably established. Accordingly I allow the revision to the extent of altering the conviction into one underSection 4(1)(a) of the Madras Prohibition Act, with reference to possession of liquor. The law does not require, unlike the case of an offence underSection 5 of some other category of Section 4(1)(a), that a minimum sentence should be imposed for this offence. This revision

petitioner has already served out an appreciable period of the sentence actually imposed (rigorous imprisonment for three months and fine of Rs. 50). Hence, the sentence underSection 4(1)(a) will now be the period of imprisonment already undergone by the revision petitioner and a fine of Rs. 50 or rigorous imprisonment for one month in default. Time for payment of fine three weeks.

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