

In Re: Velayuda Mudali and ors.

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SooperKanoon Citation : sooperkanoon.com/783066

Court : Chennai

Decided On : Dec-18-1919

Reported in : (1920)39MLJ85

Appellant : In Re: Velayuda Mudali and ors.

Judgement :

ORDER

Abdur Rahim, J.

1. One Velayuda Mudali had licensed premises for sale of arrack and mutton in this town and he and his servants have been found by the Presidency Magistrate in the four cases that are before us guilty of having kept open the arrack shop after 8 P.M. and also of carrying on the business of sale of vegetables and mutton after the same hour. We are asked to say in Cr. Rev. case No. 654 that the arrack shop was not open after 8 P. M. but the facts found by the Magistrate are that the Inspector of Police noticed a large crowd in front of the shop and that when he went in that direction somebody gave the alarm and people began to disperse and some 6 or 7 men walked out of the verandah into the street, the street door was locked and defence witness 3 one of the employees of the licensee was watching at the door. He (the Inspector) went in and found 13 persons concealing themselves in the terrace of the house and five or six more in the latrine.

2. When he entered lights were switched off. Upon these facts it seems to me to be clear that the shop was kept open. The mere fact that it purported to be closed would not make any difference while a man was kept at the door to open it for any customer to come in. It would be keeping the shop open within the meaning of the law so long as members of the public had access to the shop. The Presidency Magistrate found the accused guilty of the charges of keeping open the arrack shop and of conducting sales after 8 P. M. Whether the conducting of the sales after 8 P. M. by itself may be an offence or not the keeping open of the shop is an offence being in breach of the license granted by the police. I do not see therefore any reason for saying that the offence charged had not been made out

3. Similarly as regards the breach of the condition with respect to the shop for selling mutton the Magistrate found that mutton was kept for sale in the same premises where the arrack is sold and I do not think that we can interfere in revision with that finding.

4. These being the facts two questions were argued before us that under Section 76 of the City Police Act the holder of the license could not be convicted if, as a matter of fact, he was not in the premises when the offence was committed, that is. to say, when the shop was kept open for selling mutton or when mutton was exposed for sale after the fixed hour and that only his servants who were in charge of the premises at the time could be convicted under that section. The section undoubtedly is most unhappily worded and it is very difficult to construe it. It says 'for any breach of any of the conditions of a license granted under this act the offenders shall be liable on conviction to fine not exceeding one hundred rupees and such fine may be recovered from the person licensed, notwithstanding that such breach may have been owing to the default or carelessness of his servants or agent in charge of the shop or place. Any person so convicted shall also be liable to the forfeiture of his license at the discretion of the commissioner '. The act previous to this act (Act III of 1888) was VIII of 1867 and the section of the old act corresponding to Section 76 of the present act was 29.

5. That section was in these words ' A breach of any of the condition of a license granted under the last preceding section shall be punishable by a fine not

exceeding one hundred rupees and such fine shall be recovered from the person licensed notwithstanding that such breach may have been owing to the default or carelessness of the servant or other person in charge of the shop or place of sale. Any person so convicted shall also be liable to the forfeiture of his license, at the discretion of the Magistrate or of the Commissioner of Police.

6. It would seem that under Section 29 of the old Act only the license-holder was liable to be convicted and that the fine was to be recovered from him. It may be that it was not necessary to provide that the fine was to be recovered from him although the breach was caused by the default or carelessness of the servants. But it is not to be necessarily inferred therefore that any person other than the licensee could be proceeded against under this section. The last sentence strongly suggests the construction that only the license-holder was the person aimed at, because the section speaks of the person so convicted being also liable to the forfeiture of his license. It cannot be said that the servant or agent of a license-holder has any license to forfeit. In Section 76 of the present Act the language is different in two respects. First of all the word ' offenders ' is used and instead of saying that the fine shall be recovered as in Section 29 of the old Act it says that the fine may be recovered from the persons licensed. As regards the first it may be pointed out that here as in Section 29 of the old Act the last sentence speaks of ' any person so convicted ' and does not use the plural and by saying that the fine may be recovered instead of shall be recovered as in Section 29 of the previous Act the legislature cannot be said necessarily to have implied that persons other than the holder of the license could be convicted under Section 76, If it was the intention of the legislature to depart in this respect" from what was previously the law it might be expected that it would have made its meaning clear. We must further remember that what is punishable under the police act is the breach of the conditions of the license which would really be a breach of a contract with the licensing authority, The license is granted to the license-holder and it is he that is responsible for the observance of the conditions of the license. The license-holder often if not invariably carries on business through the agency of servants or agents but it is he (the license holder) that undertakes to conform to the conditions of the license. We were referred to Section 64 of the Abkari Act of 1886 which was enacted two years prior to the Police Act of 1888 with which we are now dealing.

That section expressly makes the holder of the license as well as the agent or servant who actually commits a breach of the conditions of a license punishable and Section 55 which is referred to in Section 64 also clearly proceeds on the same basis. But we cannot presume therefore that the legislature in enacting Section 76 of the Police Act intended to proceed on the same lines as Section 64 of the Abkari Act. On the other hand the inference should be the reverse.

7. There is another difficulty in holding that under Section 76 both the holder of the license and his agents and servants may be convicted and punished, for it is easy to imagine cases in which the distribution of fines among the licensees and the servants or agents engaged by him in the business would give rise to considerable difficulties. On the whole the proper interpretation of Section 76 would appear to be that only the license holder is liable to punishment for breach of the conditions of a license. The result is that I would uphold the conviction and sentences in Cr. Rev. Cases Nos. 654 and 656 of 1919 and set aside the conviction and sentences in Cr. Rev. Cases 655 and 657 of 1919. The fines if paid in the latter cases will be refunded.

Spencer, J.

8. I agree with my learned brother that there is evidence upon which the presidency Magistrate in these cases was entitled to come to the conclusion that the arrack shop was kept open and that business was being done in the mutton shop after closing hours and therefore acting as a court of Revision we should not interfere with the finding of guilty on the evidence.

9. On the question of law I am also in agreement. In my opinion if a shop is kept open after a prohibited hour by a licensee or by persons under his control and if he has a number of servants there is nevertheless only one breach of the covenant in the license and therefore it would be unreasonable if both the licensee and all his servants were to be convicted and separately fined as if each had committed a separate offence. The difficulty in applying Section 76 of the City Police Act has arisen out of the use of the word 'offenders' in the plural in the section but the section goes on to provide that the fine (in the singular) may be recovered from the

person licensed and it also provides that any person (in the singular) so convicted should be 'liable to the forfeiture of his license'. As my learned brother has pointed out as there is no license issued to the servant it cannot be said that he would be liable to the forfeiture of his license. This is an indication that it was in the contemplation of the legislature that only the licensee should be tried for the offence of breaking his license. Section 29 of the previous act (f 1867 also confirms this impression. It speaks of the breach being punishable not of any particular person being liable to be punished and it provides that the fine should be recovered from the person licensed notwithstanding that the default was due to the act of the servant or other person in charge. Where the legislature intends to provide for one or more persons being punished for a single offence under this act it provides in clear terms for that being done, see Sections 45, 71 and 72. For instance under Section 45 the owner of a common gaming house and his assistants are made liable to be punished separately. Similarly in the Abkari Act (Mad. Act 1 of 1886) the holder of a license is declared by Section 64 to be punishable for such breaches of the license as are mentioned in Section 55 as well as the actual offender, if the actual offender is in his employ and he fails to prove that he has done his best to avoid any breach of his license.

10. I agree with my learned brother that the convictions should be upheld in criminal Rev. cases 654 and 656 and reversed in the other two cases and that the fines in 65 and 657 should be refunded.

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