

In Re: Pujari Hanumanthappa

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Court : Chennai

Decided On : Oct-06-1936

Reported in : AIR1937Mad181; 166Ind.Cas.623; (1937)1MLJ75

Appellant : In Re: Pujari Hanumanthappa

Judgement :

Mockett, J.

1. The accused was charged before the Stationary Sub-Magistrate, Hospet, with an offence under Sections 55(o) and 58 of the Madras Abkari Act. He was convicted under Section 58. He appealed to the Joint Magistrate, Hospet, and on that appeal, the following took place. The Joint Magistrate found that it had not been proved that the arrack was illicit; that is shortly the effect of his finding. Certain evidence was given with regard to the arrack, but he said, and we think quite rightly, that that evidence did not establish that the arrack was illicit. Now proof that that arrack is illicit is the essence of the offence under Section 58 of the Act. The Joint Magistrate, having arrived at that finding, said:

On the whole, I am not of opinion that on the evidence there are sufficient grounds for acquitting the appellant.

2. We are unable to understand that statement, because if the offence had not been proved, by reason of the failure of proof of its most essential factor, it is obvious that the appellant was entitled to an acquittal. However, having said that,

the learned Joint Magistrate proceeded to express the opinion that it was desirable that there should be a fresh enquiry into the case. He therefore set aside the finding and sentence of the lower Court, and remanded the case under Section 423(b)(1) Criminal Procedure Code, for a fresh enquiry. He presumably purported to act under Section 428. It has been laid down by this High Court in several cases of which the following are examples, *Jeremiah v. Vas* (1911) 22 M.L.J. 73 : I.L.R. 36 Mad. 457 and *V.M. Rathnavelu Mudaliar v. Emperor* (1930) M.W.N. (Crl.) 47 that the object of Section 428 is not for the purpose of enabling the prosecution to produce evidence which could easily have been produced at the first trial. It is not to enable the prosecution, having failed once, to have an opportunity of trying the case all over again. That is substantially what has been done here. Moreover, the Public Prosecutor is not even able to assure us that the necessary additional evidence is in existence. Under these circumstances, the order for further enquiry is set aside and the petitioner is acquitted. His bail bond, if any, will be cancelled.

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