

**In Re: Sinnathambi**

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**Court :** Chennai

**Decided On :** Dec-19-1958

**Reported in :** (1959)2MLJ289

**Appellant :** In Re: Sinnathambi

**Judgement :**

ORDER

**Ramaswami, J.**

1. This is a Revision filed against the conviction and sentence by the learned Sub-Magistrate of Pollachi in C.C. No. 9172 of 1958, which were confirmed by the learned District Magistrate of Coimbatore in C.A. No. 556 of 1958. The Revision Petitioner was sentenced under Section 4(1)(a) of the Madras Prohibition Act and sentenced to rigorous imprisonment for two months and to pay a fine of Rs. 50, in that he was arrested with M.O. I tin, which contained six bottles of arrack at about 8 P.M. on 19th October, 1958, in the cross-cut road in Valparai limits. The correctness of this conviction was not canvassed before the lower appellate Court t but only the sentence was attacked as excessive. The learned District Magistrate refused to interfere with the sentence on the ground that the possession of a considerable quantity of arrack could only have been for sale to others. Therefore, he dismissed the appeal. Hence this Revision in which the severity of the sentence is pressed.

2. The enforcement of prohibition poses before us two difficult problems, viz., the magnitude of the evils of drink and secondly how being a deep-rooted evil, it requires systematic, fearless and severe application. The following historical account gathered from the Encyclopaedia Britannica will form a fitting introduction in the following account of this ancient problem in the earlier stages of our history.

3. Ever since man in some distant age first discovered that process of fermentation by which sugar is converted into alcohol and carbonic acid, and experienced the intoxicating effects of the liquor so produced, there has been, in a sense, a prohibition question. The records of the ancient oriental civilization contain many references to it, and from very remote times efforts were made by priests, sages or law-givers in India, Persia, China, Palestine, Egypt, Greece and Carthage to combat the vice of drunkenness. But the evil appears never to have been so great or the object of so much attention in the ancient world as in western countries and our own era. Two circumstances mainly differentiate the modern problem ; one is the use of distilled waters or spirits as a beverage, and the other, the climatic conditions prevailing in the more northern latitudes which are the home of western civilization. The intoxicating drinks used by the ancients were wines obtained from grapes or other fruits, and beers from various kinds of grain. These products were not confined to the East, but were known to the ancient civilizations of Mexico and Peru and even to primitive people who used the sugar containing juices and other substances indigenous in their country. In the time of the Romans the barbarians in the north of Europe used fermented liquors made from honey (mead) ; Barley (beer) and apples (cider) in place of grape-wine. All such drinks produce intoxication if taken in sufficient quantity ; but their action is much slower and less violent than that of distilled spirits.

4. Distillation of essences from various substances seems to have been known to the ancients and to have been carried on by the Arabians in the dark ages ; but potable spirits were not known until the 13th century. The distilled essence of wine or aqua vitae (brandy) is mentioned then as a new discovery of Arnoldus de Villa Nova, a Chemist and Physician, who regarded it, from the chemical or medical point of view, as a divine product. It probably came into use very gradually, but once the art of distillation had been mastered it was extended to other alcoholic

substances in countries where vine was not grown. Malt, from which beer had been made from time immemorial, was naturally used for the purpose, and then gin or Geneva spirits and whisky or usquebaugh (Irish for ' water of life ') were added to grape brandy ; then came corn brandy in the north and east of Europe, rum from sugarcanes in the Indies, potato spirit, and eventually, as the process was perfected, rectified ethyl alcohol from almost anything containing sugar or starch.

5. The concentrated form of alcohol, thus evolved, for a long time carried with it the prestige of a divine essence given to it in the middle ages when chemistry was allied to all sorts of superstitions. It had potent properties and was held to possess great virtue. This view is embodied in the name ' water of life ' and was at one time universally held ; traces of it still linger among the very ignorant. Ardent spirit seemed particularly desirable to the habitants of the cold and damp regions of northern Europe, where the people took to it with avidity and imbibed it without restraint when it became cheap and accessible. That happened in England in the early part of the 18th century ; and, out of the frightful results which followed, there eventually arose the modern temperance movement. The legislature had been busy with the liquor traffic for more than two centuries previously but its task had been the repression of disorder ; the thing was a nuisance and had to be checked in the interests of public order. It is significant that though drunkenness had been prevalent from the earliest times, the disorder which forced legislative control did not make its appearance until after the introduction of spirits.

6. The history of our own country illustrates the self-same historical lessons.

7. In Vedic India, the principal drinks of the Aryans were Soma and Sura. The Soma plant has not been identified. It seems to have been growing in the mountains and the plant was prepared for use by being pounded with stones or in a mortar. The women squeezed the juice out with their fingers. The juice was afterwards mixed with water and strained through a sieve and then mixed with milk or curd and sometimes with honey and offered to the Gods, and drunk by the worshippers. It seems to have had a mildly intoxicating effect like beer. There was another kind of liquor which was also widely drunk, viz., Sura. It has been

generally condemned in the Rigveda, as under its influence, men committed sins and crimes (R.V. vii, 86, 6) and became devoid of sense and drunken (R.V. viii, 2, 12, 21, 14). It has been classed with dicing as an evil (R.V. vii, 86, 6). It was the drink of men in the Sabha, and gave rise to broils (Vedic India, ii. 458). How was it prepared cannot be ascertained. It may have been a strong spirit prepared from fermented grains and plants, as Eggeling holds or, as Whitney thought, a kind of beer or ale. Geldner renders it 'brandy' (Vedic India, ii. 458-59). It was usually kept in skin-vessels (drti, R.V. i. 191, 10). According to the Taittiriya Brahmana 'it was, as opposed to Soma, essentially a drink of ordinary life' (Ved. Ind. ii. 458). (A.C. Das: Vedic Culture, pp. 209-210).

8. In Epic period and subsequently, liquor seems to have become an article of general consumption. Wine is referred to as an article of general consumption in all early literature.

Let wine drinkers drink wine, let the hungry eat payasa and those who are inclined to it eat clean meat.

The Brahmins were later on prohibited its use. Palm-wine must have been in use very early ; mostly the liquors were obtained by distillation. The Ramayana refers to a beverage of this sort procured from fruits and the sugarcane. Manu refers to three varieties of wine according as the liquors were distilled from molasses (gaudi), bruised rice (paishti), and the flowers of the Mahua tree (Madhvi). The two former may be equivalent to the arrack and the rum of our times. Regulation of the liquor traffic was a special concern of the State. It was placed under a superintendent. The sale of liquor is to be centralised or decentralised in accordance with the requirements of demand and supply. Liquors were not allowed to be taken out of villages ; and the liquor shops were arranged at some distance from each other. Bad liquor was given sometimes to slaves or workmen in lieu of wages. Liquor could be sold to persons of well-known character in very small quantity,

lest workmen spoil the work in hand, and Aryas violate their decency and virtuous character and lest firebrands commit indiscreet acts.

On special occasions people were allowed to manufacture white liquor, arishta for use in diseases, and other kinds of liquor. On the occasion of the festivals, fairs, and pilgrimage, right of manufacture of liquor was allowed for four days. Normally those who dealt with liquor other than that of the kind had to pay five per cent, as toll. The Arthashastra refers to Medaka, Prasanna, Asava, Arishta, Maireya, and Madhu as varieties of liquor. (Buch : Economic Life in Ancient India, Volume II, p. 181).

9. There was regulation of the drink traffic. Among other affairs of civic life Kautilya provides for the regulation of the drink traffic and gambling. Brahmins were placed under severe penalties for indulging in liquor. Neither taverns nor gambling-halls were allowed in villages, and those in towns were limited in number and under strict supervision. The former had to be decently furnished and provided with scents, flowers, water and other comfortable things, according to the season, so that the lure of the drink should not be the only attraction. Inspectors or spies stationed in the taverns took note of the habitues and ascertained whether they drank moderately or excessively. They also noted the value of the jewellery and other valuables in possession of customers who were intoxicated, for, in the event of robbery the tavern-keeper had not only to make good the loss, but was liable to a fine of the same amount.

10. The superintendent of liquor was to carry on the traffic in liquor and ferments in the capital, the other parts of the country and in army camps by employing men familiar with them, he was to impose a fine of 600 panas if anyone other than the manufacturers, licensed vendors and vendees sold or purchased liquor, he was not to allow liquor-shops to be opened close to each other, he was to see that liquor was sold in small quantities such as 1/4 or 1/2 of a kudumba or a half prastha to persons of known character in order that (lit. for fear) workmen employed should not cause loss through carelessness, that aryas might not violate the rules of good conduct and that desperadoes should not commit indiscreet acts. Sukra was even more strict as regards wine, as he did not allow anyone to drink wine in the day-time (IV, 4, 43). (Sri P. V. Kane : History of the Dharmasastra, Volume III, page 147 and V.A. Smith, I.C.S. : The Oxford History of India (1919), p. 91).

11. But by the time of Asoka the evils of drink and gambling came to be so widely realised that under the powerful influence of a highly centralised government during a period of thirty-eight years the tradition of vegetarian food and non-alcoholic drinking became the rule of the upper classes in Hindu Society (E.B. Hardell : History of Aryan Rule in India, p. 100).

12. So much so, Fa Hien, the Chinese Traveller, could write of the Gupta Empire of Madhyadesa ' the people of this country kill no living creatures, nor do they drink intoxicating liquors, nor are there shambles or wine-shops round their markets ' . (Travels of Fa-Hien : Beal's Trans., p. 55).

13. The religion of Islam strongly favoured abstention from intoxicating liquors and therefore Muslim Rule in India favoured prohibition. We have an interesting account of the measures taken by Alauddin Khilji in Elliott & Dowson : History of India, as told by her own historians, Volume III, Tarith-i-Firoz Shahi.

14. Alauddin, with a self-denial rare in a despot of his type, even put a check upon his own vices. Finding that his drinking habits impaired his efficiency as a war-lord, he gave up wine-parties entirely, prohibited wine-drinking and wine-selling, and the use of beer and intoxicating drugs. He ordered that the china and glass vessels of his banqueting hall should be broken. Jars and casks of wine were brought out of the royal cellars and emptied at the Badaun Gate in such abundance that mud and mire were produced as in the rainy season. Holes for the incarceration of wine-bibbers were dug outside the gate, and the severity of the punishment was such that many of them died. The terrors of these holes deterred many from drinking.

15. Turning to Southern India, both the inscriptions as well as Tamil literary works clearly show, that the consumption of intoxicating liquors was widespread among the lower middle-classes and warrior classes. On the spread of Buddhism and Jainism, fierce movements for restriction in the use of liquor set in and the classes of people connected with the tree-tapping and distillation of liquor came to be looked upon as occupationally degenerate classes (e.g., Shanars). In fact an historical account can be written on this subject. But it is enough for our purpose here to give (a) two extracts from a history of South India and (b) an illustration of the public attitude towards drink by an extract from a well-known Tamil work,

Thirumantiram.

16. No occasion was lost for holding a feast and the poets are most eloquent in their praise of the sumptuous fare to which they were so often asked. One poet declares to his patron:

I came to see you that we might eat succulent chops of meat, cooled after boiling and soft like the carded cotton of the spinning-woman and drink large pots of toddy together.

Another speaks of wine poured into golden goblets by smiling women decked with jewels in the Court of Karikala. The flesh of animals cooked whole, such as pork from a pig which had been kept away from its female mate for many days and fattened for the occasion, appam (pudding) soaked in milk the flesh of tortoises and particular kinds of fish are mentioned as delicacies served at such feasts. Among drinks particular mention is made of foreign liquor in green bottles, of munir (triple water) a mixture of milk from unripe cocoanut, palm fruit juice and the juice of sugarcane, and of toddy well matured by being buried underground for a long time in bamboo barrels. (K.A. Nilakanta Sastri : A History of South India, Second Edition, Oxford University Press, 1958).

17. Alcoholic drinks seem to have been very popular among the rich. The bhogis or the cultured persons of both sexes considered drinking liquor as a special mark of refinement. The most common beverage which they drank appears to have been the toddy drawn from the coconut palm. The taverns, with pandals of cuscus grass in their front, appear to have been the usual resorts of lovers, where they spent the moon-lit nights in each other's company.

18. The nobles, however, did not frequent the taverns, although they were more addicted to drink than the common people. There is reason to believe that a portion of the mansion of each nobleman was specially set apart for celebrating Bacchanalian festivities. In the summer season, they would adjourn to the candrasala allured by the brilliant moonlight. The candrasala was probably decorated for the purpose. The maids of honour, who played a prominent part on such occasions took particular care in arranging wine-pots brimming with liquor

and cups of gold and silver set with precious stones. Dishes containing delicious upadamsanas of meat were also placed by their side so that the revellers might nibble at them as a relish to drinking. Some of the popular varieties of liquor were uspasava, talamadhu, alkasava, madirarasa, maireya and draksasava besides narikelasava which has already been mentioned. The liquor was sometimes taken in a raw condition ; but it was customary to subject it to a process of concoction by adding some ingredients such as powdered camphor, in order to remove the disagreeable odour and make it more pleasant to the taste.

19. The convivial party would usually begin rather late in the night. The people comprising the party squatted on the ground in a circle around the wine-pots and sipped the wine slowly from the cups, nibbling at the relish every now and then. Sometimes, lovers exchanged their cups, probably to feel more at home in each other's company. Song and dance enhanced the gaiety of the occasion. They drank until they became thoroughly intoxicated. The behaviour of the young women attending the festivities of the candrasala is vividly described by a contemporary writer.

One young woman who lost her balance completely tumbled down muttering words in an incoherent and indistinct fashion ; another laughed loudly and uttered obscene words and phrases causing delight to her lover ; one lost all sense of shame and strutted like a pigeon ; a few sang and frolicked, whereas several joined in a game of hide-and-seek. One of the young women in whom intoxication reached the highest pitch, having stripped herself of her clothing, went about the place in a naked condition.

20. Such seem to have been the pleasures which allured the people to the moonlit candrasalas ; but they did not wound the popular sense of decency, as they were strictly confined to the high-walled zenanas. (Sri N. Venkataramanayya: Studies in the History of the Third Dynasty of Vijayanagara, University of Madras Publication, page 398 and foll.)

21. Here is another contemporaneous account of Tamilnad between A.D. 50 to A.D. 150:

In the toddy-shop one was regaled with toddy and the fried flesh of the male pig which had been fattened by being confined in a pit and fed for many days on rice-flour. Toddy drawn from the cocoanut palm was drunk by the poor classes such as labourers, soldiers and wandering minstrels. Scented liquors manufactured from rice and the flowers of the Thathaki (*Bauhinia Tomentosa*) and other fragrant substances were used by the higher classes. Cool and fragrant Wines brought from Yavana (or Greek) ships, which must have been therefore very costly, were the favourite drink of the Kings.

(Kanakasabai: The Tamils Eighteen-hundred Years Ago, Second edition, by the South India Saiva Siddhanta Works Publishing Society, 1/140, Broadway, Madras-1, page 125).

The cow fed on broth of rice wanders not from tank to tank ;

The cow denied its drink of broth grows weak and lank ;

Who swill the toddy neat, from righteousness go astray ;

Truest drink is Sivananda, the Bliss Supreme, far and away.

They drink and perish, who to the Vama sect belong, the lustful ones in sensual delights are wholly lost. But the pure souls find the Om's light in their inner flame; They, who His true Name chant, approach Him fast.

\* \* \* \* \* They, who soak in liquors, Truth ne'er can appraise.

\* \* \* \* \* The fumes of Wine stupor bring and destroy the truth, and make us seek the false, delusive joys of lust ; Such advance not to wisdom true, of sweet reason compact will such ne'er attain the eternal bliss truest ?

22. Bearing these facts in mind, we cannot say that after the length of time in which prohibition has come to be the statute of this State, there are any grounds to treat with leniency the sale of illicit liquor as contradistinguished from the consumption of liquor by addicts who cannot easily wean themselves from their habits and in whose case education and the help of institutions like Alcoholics Anonymous in the U.S.A. and elsewhere will wean rather than punitive measures.

23. This Revision is dismissed.

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