

In Re: M. Kuppuswamy

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SooperKanoon Citation : sooperkanoon.com/800450

Court : Chennai

Decided On : Apr-29-1966

Reported in : 1968CriLJ416

Judge : Venkataraman, J.

Appellant : In Re: M. Kuppuswamy

Judgement :

Venkataraman, J.

1. This is an unfortunate case. The facts are these. The petitioner Kuppuswami was charged by the Sub Inspector of Police before the VIIIth Presidency Magistrate, G.T. Madras, for an offence under Section 4(1)(a) of the Madras Prohibition Act, the allegation being that on 14.9.1965 at about 16 hours at Kothawalchavadi, he was found in possession of a bottle containing 12 ounces of coloured alcohol and a small bottle containing 1 ounce of coloured alcohol without permit. On 15.9.1965 the first day of hearing, when the copies of the records were furnished to him and he was questioned under Section 242, Criminal P.C. (this being a summons case), he denied the offence. Consequently, summons were issued to the prosecution witnesses. The case was adjourned to 21.9.1965. Since the witnesses were not ready, it was adjourned to 29th September 1965. On that day, the following is what happened according to the judgment of the learned Magistrate:

Today when the case is taken by up for trial, the accused filed a memo, admitting the offence. The records produced by the prosecution do not indicate any bad antecedents about this accused. Accused feels penitent for the offence and appeals for mercy. Taking into consideration the repentance of the accused I feel that the accused should be given a chance to reform himself. Therefore, instead of sentencing the accused to any punishment, I order the release of the accused under Section 3 of the Probation of Offenders Act, after due admonition.

2. The accused has filed this criminal revision and has filed an affidavit stating that he did not plead guilty at all, that a fraud was played upon him by an advocate, Mr. Ansari whom he engaged and that the advocate made him understand that the case against him had been dismissed and that he could go home after signing some paper he produced. Actually the memorandum is written in English but signed by the accused in Tamil.

3. In view of the serious allegations made by the petitioner I called for a report from the learned Magistrate and also issued notice to Mr. Ansari. The Magistrate has sent a report, the relevant portion of which is:

On 28th September 1965 Mr. Ansari, Advocate, filed a memo signed by the accused representing that the accused volunteered and pleaded guilty and pleaded for leniency. The accused was questioned with reference to the memo signed by him and he accepted it. The case was disposed of later admonishing him under Section 3 of the Probation of Offenders Act.

Mr. Ansari has filed a detailed counter affidavit denying that he played any fraud and stating that on 29th September 1965 the accused came to him and wanted his help saying that he was going to plead guilty in the case. It was thereupon that he drafted the memo and the learned Magistrate also questioned the accused with reference to the contents of the Memorandum and the accused pleaded guilty.

4. I accept the statement of the Magistrate that the accused was questioned with reference to the memo, signed by him and he accepted it as correct. This prima facie supports the version of Mr. Ansari but I do not think it necessary, for the disposal of the revision petition before me, to go further into the truth or falsity of

the allegation made by the petitioner against Mr. Ansari. For the purpose of this revision petition, it is enough to observe that even accepting the statement of the learned Magistrate, there seems to be no provision in the Code to justify such a procedure. Section 242 says that when the accused appears before the Magistrate, the particulars of the offence shall be stated to him and that he should be asked if he has any cause to show why he should not be convicted. Under Section 243, it is open to the accused to admit the offence. Section 244 says that if the accused does not admit the offence, the Magistrate shall proceed to hear the complainant if any and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take evidence in his defence. Section 245' says that if the Magistrate upon taking the evidence referred to in Section 244 and such further evidence desired by the Magistrate and if he thinks fit, examining the accused, finds the accused not guilty, he shall record an order of acquittal. But if he finds him guilty he may pass sentence upon him according to law. Thus, there is no provision contemplating the filing of a memorandum by the accused admitting his guilt after the initial stage under Section 243, Criminal P.C. The decision of Somasundram J. in *In re Kadan Kunhikannan* : AIR1957 Mad795 is distinguishable, because there the prosecution witnesses were examined as required by Section 244, Criminal P.C., and it was only when the accused was further questioned under Section 245, Criminal P.C., they admitted the offence and the learned Judge held that the court was justified in accepting the prosecution evidence and acting on the admission of the accused at that stage. Sri Sreeramulu appearing for the learned Public Prosecutor is not able to cite any authority to justify the procedure which was adopted in this case. On this ground I set aside the conviction and sentence and direct, the case to be retried by some other magistrate.