

Abdullah Vs. State

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Court : Chennai

Decided On : Mar-07-1951

Reported in : AIR1951Mad883a; (1951)1MLJ698

Judge : Panchapakesa Ayyar, J.

Acts : Madras Prohibition Act, 1937 - Sections 4(1), 16 and 34

Appeal No. : Cri. Revn. Case No. 996 of 1950 and Cri. Revn. Petn. No. 929 of 1950

Appellant : Abdullah

Respondent : State

Advocate for Def. : The State Prosecutor

Advocate for Pet/Ap. : Inamdar Abdul Salam, Adv.

Disposition : Conviction and sentence set aside

Judgement :

ORDER

Panchapakesa Ayyar, J.

1. The petnr. in this case is one Abdullah carrying on a petty betel shop business in Gandhi-Irwin Road, Egmore. The prosecution case was that P. W. 1, a Sub-

Inspector of Police, searched his shop on 1-10-1949 & seized therefrom 10 bottles (M. O. 1) suspected to contain liquor. On analysis, on 12-12-1949, they were found to contain 1.4 per cent spirits. The petnr's contention before the learned Chief Presidency Mag., who tried him, was that the bottles seized from his shop were bottles called 'Jeeva Bhaskaram', a medicinal preparation exempted by the Madras Govt. from the operation of the Prohibition Act & said to contain 0.2 per cent spirits & manufactured by D. W. 1, K. B Subramaniam, an illiterate man who submitted a bottle of this mixture to the Board of Revenue which tested it & found it contain 0.2 per cent spirits, & exempted it from the operation of the Act. D. W. 2, a neighbouring shopkeeper, corroborated the petnr's version & said that the 10 bottles seized were only bottles of 'Jeeva Bhaskaram'. The learned Chief Presidency Mag. did not believe the evidence of D. W. 9. as he was a neighbouring shopkeeper & a fellow Muslim, & might have been actuated by a desire to make the petnr. escape. He was confirmed in this belief by the fact that D. W. 2 stood surety for the petnr. & got him out of jail. The lower Ct. held that the 10 bottles seized from the petnr. were not bottles of 'Jeeva Bhaskaram' & must have been different bottles containing a higher percentage of spirits. It believed the evidence of P. W. 1 that the bottles he seized did not have the label 'Jeeva Bhaskaram', on them, as spoken by the petnr. & D. W. 2. It also went on to observe that even if the bottles seized were really bottles of 'Jeeva Bhaskaram', the petnr. would still be liable to be convicted under the Madras Prohibition Act as, on examination by the analyst, the contents of these bottles showed 1.4 per cent spirits instead of 0.2 per cent spirits which alone had been found in the 'Jeeva Bhaskaram' bottle submitted to the Board of Revenue & Govt. for exemption, & exempted from the operation of the Act. D. W. 1, the maker of the preparation, said that with long keeping the spirits content of the 'Jeeva Bhaskaram' would go on increasing. The lower Ct. remarked that even if that were so the petnr. would still be liable, as he should have sold them away before the spirit content increased above 0.2 per cent, the exempted figure. It, therefore, convicted the petnr. Under Section 4 (1) (a), Madras Prohibition Act, & sentenced him to pay a fine of Rs. 100 or, in default, to undergo R. I. for six weeks.

2. I have perused the records & heard the learned counsel for the petnr. & the learned Public Prosecutor 'contra'. The learned counsel for the petnr. urged

vehemently that the bottles seized were only 'Jeeva Bhaskaram' bottles, & not any other bottles, & that the lower Ct. went wrong in believing the uncorroborated testimony of P. W. 1 that they were not 'Jeeva Bhaskaram' bottles, especially When Munuswami Gramani, one of the Panchayatdars present at the seizure, was not examined to corroborate P. W. 1, & no one else also had corroborated him, & D. W. 2, a neighbouring shopkeeper, had sworn that the bottles seized were only 'Jeeva Bhaskaram' bottles. The learned State Prosecutor agreed that Munuswami Gramani ought to have been examined to corroborate P. W. 1 in the circumstances of this case. I have no hesitation whatever in holding that, in the circumstances of this case, Munuswami Gramani ought to have been examined if the prosecution reld. on its contention that the bottles seized were not 'Jeeva Bhaskaram' bottles. The Madras Prohibition Act gives very great powers to searching authorities, & inflicts very severe punishment on people committing offences under the Prohibition Act. It is therefore of the utmost importance that there should be a satisfactory evidence before the Cts. regarding the articles seized from each accused person. That is why search officers have to take Panchayatdars with them at the time of the search under the law, but the object of taking such Panchayatdars will be frustrated if those Panchayatdars, or one of them at least, are not examined in Ct. to corroborate the evidence, of the search officer. It is no use saying that P. W. 1, the Sub-Inspector of Police, had no motive to perjure against the petnr. When his statement that the bottles seized by him were not 'Jeeva Bhaskaram' bottles were disputed, It was the clear duty of the prosecution to have examined Munuswami Gramani, the Panchayatdar, to corroborate P. W. 1. Failure to do so will only lead to one result, namely, giving the benefit of doubt to the petnr., & holding that the bottles seized by P. W. 1 were 'Jeeva Bhaskaram' bottles, as I do now.

3. Now we come to the second point. I cannot agree with the lower Ct. that it was the duty of the petnr. to examine the contents of 'Jeeva Bhaskaram' bottles given to him for sale by the manufacturer, D. W. 1, or his agents, & to satisfy himself that those contents did not exceed 0.2 per cent spirits, as found in the bottle submitted to the Board of Revenue for examination before it approved its exemption. No dealer can be compelled under the law to open bottles of medicines & preparations containing a percentage of spirits & exempted from the Act, in order

to see whether they contained more spirits than found by the authorities when they were exempted. In that case, every bottle of Woodward's Gripe Water & other well known medicines will have to be opened & tested by the dealers & commission agents, who are often not qualified at all to examine the contents, before they can sell them. Once the Govt. takes the grave responsibility of exempting any medicine or preparation from the Prohibition Act, it must take the risk of some of the bottles of that preparation so exempted containing, either deliberately or accidentally, more spirits than the bottles submitted to the Govt. for purposes of exemption did. That risk will be greater in the case of country preparations, like 'Jeeva Bhaskaram' made by the illiterate D. W. 1, than in the case of standard preparations like Woodward's Gripe Water manufactured by well-known chemists. The lower Ct. went further & observed that even if the spirits content of 'Jeeva Bhaskaram' would increase by keeping, it was the petnr's duty to see that the 0.2 per cent spirits, exempted, was not exceeded. It forgot that the petnr. must find a buyer & cannot be expected to sell without finding him. Once the preparation is exempted, it must be taken for granted that any dealer or commission agent, like this petnr., trading in such preparation is free to trade in it without examination of the contents or limitation of the period of keeping, unless, of course, the notfn. exempting the preparation prescribes these additional limitations, which is not the case here, or the dealer adds spirits himself, which also is not the case here.

4. In the end, therefore, I give the benefit of the doubt to the petnr. & set aside his conviction & sentence, & acquit him, & direct the fine, if paid, to be refunded to him. Conviction and sentence set aside.

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