

In Re: Amir Sultan and ors.

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Court : Chennai

Decided On : Feb-17-1956

Reported in : AIR1957Mad796; 1957CriLJ1424

Judge : Somasundaram, J.

Acts : Madras Prohibition Act, 1937 - Sections 4(1), 11 and 16; Madras Denatured Spirit and Methyl Alcohol Rules, 1939; [Evidence Act, 1872](#) - Sections 133; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 32

Appeal No. : Criminal Appeal Nos. 466, 478 and 491 of 1955

Appellant : In Re: Amir Sultan and ors.

Advocate for Def. : Public Prosecutor

Advocate for Pet/Ap. : G. Gopalaswami and ;C.K. Venkatanarasimham, Advs.

Judgement :

Somasundaram, J.

1. Accused 1 to 5 in S. C. No. 67 of 1955, on the file of the Additional Sessions Judge, Timchirapalli, are the appellants herein. C. A. No. 466 of 1955 is by accused 3 to 5; C. A. No. 478 of 1955 is by accused 1; and C. A. No. 491 of 1955 is by accused 2. They were tried under five charges: the first was against all of them under Section 120-B, I. P. C., for an offence of conspiracy in that they

conspired together to fabricate import permits for denatured spirit, purporting to have been issued by the Assistant Commissioner of Excise, Kottayam, and to transport them via Tiruchirapalli to Travancore and Cochin State, the second was against the first accused for an offence under Section 467, I. P. C., for having forged the permit Ex. P-10, purported to have been issued by the Assistant Commissioner, Kottayam; the third was against the second accused under Section 471, read with Section 467, J. P. C., for having used this Ex. P-10 as genuine knowing it to be forged; the fourth was also against the second accused under Section 420, I. P. C., for having in furtherance of the conspiracy, dishonestly induced the K. C. P. Ltd., Vuyyuru, to deliver 1000 gallons of denatured spirit by using forged permits; and the fifth was against accused 2 to 5 under Section 4(l)(a) read with Section 7(a) of the Madras Prohibition Act for having transported denatured spirit from Vuyyuru to Tiruchirapalli and thence to Tanjore without any valid permits. The learned trial Judge found accused 1 guilty on the second charge under Section 467, I. P. C., and sentenced him to one year's Rule I. He found accused 2 to 5 guilty on the fifth charge under Section 4(l)(a) read with Section 7(a) of the Madras Prohibition Act and sentenced them to Rule I, for one year.

2. The accused were acquitted of other charges.

3. The case for the prosecution is this: One Thillai Chidambaram, who is said to be absconding still, is said to have attempted to get from P. W. 2, the Assistant Commissioner of Excise, Kottayam, permits for importing into Kottayam about 3000 gallons of denatured spirit from K. C. P. Ltd., Vuyyuru, Krishna Dt. Two applications were filed by him before the Assistant Commissioner, but both of them were rejected as the quantity applied for was very large. Those applications were first filed on the 21st May 1953.

On the 25th the said Thillai Chidambaram again went with two fresh applications, one for 1000 gallons and another for 2000 gallons. They are Ex. P-6 and P-7. On the application for 1000 gallons, viz., Ex. P-6 the Assistant Commissioner ordered for the issue of 250 gallons, and the other application, Ex. P-7 was still pending orders. A permit was, therefore, issued for 250 gallons to be imported from the K. C. P. Ltd., Vuyyuru, and it was to be current for 30 days. The said Thillai

Chidambaram, not content with the 250 gallons for which he obtained the permit, is alleged to have entered into a conspiracy with the first accused and others to forge a permit for 1000 gallons and Ex. P-10, which is said to be such a permit, is said to have been forged by accused 1 at the instance of the said Thillai Chidambaram.

With this forged permit Thillai Chidambaram went to the Collector of Krishna and applied for another permit, which is necessary under the rules, so that he can transport from Krishna Dt. within which is the said K. C. P. Ltd. 1000 gallons of denatured spirit to Kottayam. The evidence of P. W. 54, who is a clerk in the District Magistrate's Office, Krishna, and who was in charge of the prohibition matters at that time, shows that EX. P-15 was the permit issued by the District Magistrate for export of 1000 gallons of denatured spirit from K. C. P. Ltd., Vuyyuru, to Kottayam, via Madras. Under the conditions of the permit, 1000 gallons of denatured spirit can be transported from Vuyyuru both by rail and road.

That Ex. P-15 is a genuine permit according to the rules in force at the time in the State of Madras and issued by the proper authority is not disputed. Under the cover of this permit, accused 2 to 5 were engaged in transporting these 1000 gallons. They went as far as Tiruchi, but instead of going direct to Kottayam, they are said to have turned to Tanjore. Accused 4 and 5 are said to be lorry brokers and accused 3 is a merchant keeping a hardware shop at Tiruchi and accused 2 is a servant under P. W. 16, who advanced monies for this business.

At Pillayarpatti on the way, the barrels containing the denatured spirit are said to have been unloaded, as some of the barrels were leaking. It is there that the authorities seized the spirit. After subsequent investigation, charge-sheets were filed against, these five accused and Thillai Chidambaram. As the said Thillai Chidambaram was absconding, the case against him was split up and the case against these appellants was tried by the Additional Sessions Judge of Tiruchirapalli.

4. Several contentions have been raised by the learned Counsel who appears for accused 2 to 5, one of which is that this is not an offence under Section 4(1) (a) read with Section 7(a) of the Prohibition Act, and reliance was placed on a decision of a Bench of this Court in *Hussain Bee v. State*, 1955 MWN 143(A),

wherein it was held that the Act (meaning the Prohibition Act) had drawn a clear distinction between the offences in regard to liquor and intoxicating drugs, pure and simple, in respect of which a total prohibition was being enforced and those preparations containing alcohol used for medical and toilet or industrial purposes, in regard to which a restriction only was being enacted. This being a case of denatured spirit, used for industrial purposes, or perhaps for even medicinal and toilet purposes, it will fall under the scope of the observation that only restriction will apply and not total prohibition.

The transport has, therefore, to be done under the rules framed for the purpose, and there can be no doubt that any offence committed in, respect of the same can only be an offence under the rules. The Madras Denatured Spirit and Methyl Alcohol Rules of 1939, which have been framed under the powers conferred by Sections 16, 18, 21 and 54 of the Act, do not create an offence under the rules for violation of these rules as G. O. Mis. 5452 Development, dated 19-12-1952 has created an offence in respect of French Polish. It was, therefore, contended that the section under which the offenders can be punished for violation is Section 11 and not Section 4 (1)(a). Section 11 of the Prohibition Act states as follows:

'Whoever is guilty of any wilful act or intentional omission in contravention of any of the provisions of this Act or of any rule, notification or order made there under and not otherwise provided for in this Act, shall be punished with fine which may extend to two hundred rupees.

5. This being an offence under a rule and for which no specific punishment has been provided, it is clear that it is only Section 11 that will apply and if anyone contravenes the rules framed under Section 16 in respect of denatured spirit, they will be liable only under Section 11 of the Madras Prohibition Act. There can be no doubt, therefore, that Section 4(l)(a) will not apply to accused 2 to 5. This is assuming that an offence has been committed by them under the rules

6. But, as the evidence clearly shows, accused 2 to 5 transported this spirit under Ex. P-15, which, as already stated, is a genuine permit issued by Collector of Krishna to transport 1000 gallons of denatured spirit. It is true that this permit was issued by the Collector, Krishna on the strength of Ex. P-10, which is undoubtedly

a forged one. That Ex. P-10 is a forged permit is not disputed, because P. W. 2 speaks to it and the evidence of P.W. 1, the approver in the case, also supports it. The question now is whether the fact that Ex. P-15 was obtained under false pretences representing that Ex P-10 was a genuine permit would render Ex.' P-15 an invalid'permit.

The fact that a genuine permit was go under false pretence will not, in my opinion, make the genuine permit a forged one or an invalid one. The permit so far as it goes is a valid permit which can be used and'the only action that can be taken against those who obtained this genuine permit on false pretences is to charge them for offence of cheating or other allied offences. But so far as Ex. P-15 which covers 1000 gallons, is concerned, it is genuine permit and, therefore, there has been no transport without a valid permit.

The transport has been, under a genuine permit, notwithstanding its being issued under a false impression. Accused 2 to 5 were concerned only with the transport under this permit. It cannot be said that they have committed any offence by violating any of the rules framed for the transport of this de-natured spirit. Their convictions and sentences will, therefore, be set aside, and they are hereby acquitted.

7. So far as accused 1 is concerned, he has been convicted of having forged Ex. P-10. The evidence of P.W1. 1, the approver in the case, clearly shows that it was he who forged Ex, P-10. There is also the evidence of P.W. 28 who says^that it was accused 1 who forged the permit. But it is contended that P. W. 28 is also in the nature of an accomplice and P. W. 1 being' an accomplice, P. W. 28's evidence cannot corroborate the evidence of P.W. 1. But a reading of the evidence of P.W. 28 will show' that he is not such an accomplice whose evidence requires corroboration.

As pointed out by the Privy Council in Srinivas Mall Bairolia v. Emperor, 1947 MWN 123 at p. 180: AIR 1947 PC 135 at pp. 138-139) (B), the degree of suspicion which will attach to the evidence of an accomplice must however vary according to the extent and nature of the complicity. The nature and the extent of the complicity of P. W. 28 is small, bordering almost on nullity, that it will be open to a Court to

act merely on his evidence alone without any further corroboration, in this case we have the evidence of P. W. 1, corroborated by the evidence of a witness like P. W. 28 and on the evidence of both it is clearly established that accused 1 forged this permit, Ex. P-10. He, is, therefore, guilty of the offence of forgery under Section 467, I. P. C.

8. The only question now is whether the sentence of one year's Rule I can be said to be excessive. There is no doubt that the principal offender in this case is Thillai Chidambaram, who, as already stated, is still absconding, and the evidence shows he (accused?) was a mere tool in the hands of Thillai Chidambaram and others. In view of the fact that he has been inside the jail, nearly for seven months from the date of his conviction and has been in remand for another eight or nine months prior to conviction, I think the ends of justice will be met, by reducing the sentence to the period already undergone. While, therefore, confirming his conviction, I reduce the sentence to the period of imprisonment already undergone.

9. In the end the appeals of accused 2 to 5 are allowed and the appeal, of the first accused, with the modification with regard to the sentence, is dismissed.

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