

In Re: Dr. A.L. Meganathan

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Court : Chennai

Decided On : Apr-20-1951

Reported in : AIR1951Mad996; (1951)IIMLJ195

Judge : Basheer Ahmed Sayeed, J.

Acts : Madras Prohibition Act, 1937 - Sections 3(1) and 4(1)

Appeal No. : Criminal Revn. No. 296 and Cri. Revn. Petn. No. 295 of 1951

Appellant : In Re: Dr. A.L. Meganathan

Advocate for Def. : Asst. Public Prosecutor

Advocate for Pet/Ap. : B.C. Panchanathan, Adv.

Disposition : Conviction and sentence set aside

Judgement :

ORDER

Basheer Ahmed Sayeed, J.

1. The petitioner has been convicted in this case under Section 4(1)(h) of the Madras Prohibition Act, X (10) of 1937. Section 4 (1) (h) is to this effect, viz.,

'Whoever bottles any liquor for purposes of sale is liable to punishment under the Act'.

In this case what the petitioner is alleged to have done is that under a licence granted to him for sale of liquor as a medical man he obtained a certain quantity of liquor and had it bottled in smaller bottles of two ounces each and kept them in his dispensary ready for sale to persons who might go to him with prescriptions from doctors. It is true that three such bottles are said to have been recovered from his dispensary on a raid conducted by the Prohibition Officer. This transfer of liquor in quantities permitted by the licence, viz. of two ounces from a bigger bottle to smaller bottles is the gravamen of the charge. The Court of first instance relied upon a document, Ex. P-6 which is said to be a proceeding of the Board of Revenue wherein it is stated that firms dealing in liquor ought not to be allowed to refill liquor in bottles. Incidentally there is also some reference to licensees who can dispose of brandy as an ingredient of a mixture or as such in quantities not exceeding two ounces at a time and it further states that it does not authorise the refilling of brandy in bottles of two ounces capacity and that this process of refilling brandy is an offence. This proceeding of the Board of Revenue, which the learned Magistrate who originally convicted the petitioner has so much relied upon has not been relied upon by the Sub-Divisional Magistrate who heard the appeal. He has observed that the said proceedings do not have the force of law but could be construed only as an interpretation of law. The learned counsel for the petitioner, Mr. Panchanathan, has urged before me that this document should not have been taken into consideration by either of the Courts below. He has cited 'In re Damodara Naidu' 2 Mad L W 1120 in support of his contention. This proceeding of the Board of Revenue has not been proved as required by law and no-certified copy is said to have been produced. The tenor of the proceeding is one of instructions to the Subordinate Officers and it cannot be construed to have the force of a rule or statute I agree with the learned counsel for the petitioner that the proceeding is wholly inadmissible and that it ought not have been received in evidence at all. In the next place, both the Courts have held that the act of transferring the bulk of 18 ounces of brandy which the petitioner is entitled to keep under the terms of licence in smaller bottles of two ounces is an offence. The learned counsel for the petitioner contends that the proviso to Section 4 (1) of the Prohibition Act :

'Nothing contained in this Sub-Section shall apply to any act done under and in accordance with the provisions of this Act or the terms of any rule, notification, order, licence or permit issued thereunder.'

does not make the act done by the petitioner namely the transfer of liquor from a bigger bottle to smaller bottles, an offence. There is force in this contention. It must be remembered that the petitioner is a medical officer and it is also stated that he is a medical officer of 27 years standing and is now also a member of the Prohibition Committee, though for sometime previously he was himself the President of that committee. It is also brought to my notice that there seems to have been some misunderstandings between the present President of the Prohibition Committee and this petitioner. But I do not think that this is relevant for purposes of disposing of this revision case whatever might be the background for the charge. We have to consider only the question whether the petitioner has really committed the offence as charged. He has been authorised to sell liquor in quantities not exceeding two ounces and he is also entitled under the terms of the licence issued to him to keep the bulk quantity allowed to him in his shop for purposes of sale. The question is whether in the course of such selling which he is allowed to do, having kept smaller bottles ready for sale to persons who go to him with prescriptions from a doctor, is an offence and whether such an act is not permitted under the licence. The terms of licence have been perused by me and there is no term which prohibits this licensee from keeping ready for sale as a medical man to persons who may bring prescriptions from registered medical practitioners to buy two ounces of brandy at a time. One of the terms of the licence says 'The privilege extends only to the sale by chemists on the prescription of a qualified medical practitioner of brandy either as an ingredient of a 'mixture or by itself in quantities of not more than two ounces at a time' and of medicated wines and similar preparations containing any per centage of alcohol 'in sealed bottles in quantities not exceeding one quart at a time'. The appellant is a chemist and deals in chemical products and for purposes of his trade and business if he keeps ready bottles containing two ounces of brandy from out of the quantity which has been permitted to him to carry on his business as Chemist, I do not think how it can be stated that he has committed the offence and has exceeded the terms of the licence. It is inconceivable how else he could sell the authorised quantity to suit

the convenience of the buyers and his own. 'Bottle' has been defined in Section 3 of the Act thus: ' 'Bottle' means to transfer liquor, from a cask or 'other vessel' to a bottle, jar flask or pot or similar receptacle for the purpose of sale whether any process of manufacture be employed or not and includes 'rebottling'. The process of bottling obviously is applicable to firms who deal in brandy and also to persons who manufacture large quantities and then divide them into smaller quantities in order to facilitate the distribution and disposal of the quantities manufactured by them. I do not think that it was the intention underlying this definition that a chemist who is permitted to sell small quantities on production of prescriptions from doctors should also be treated on the same footing as a manufacturing or a distributing firm dealing in liquor. I think it is too much straining of the language contained in the definition in Section 3 (1) to say that a chemist who is permitted to sell liquor by itself in quantities not exceeding two ounces is bottling or re-bottling. It would be legitimate act on the part of the licensee to keep liquor in smaller bottles to facilitate his trade as a chemist so long as he acts within the directions of his licence. I am unable to agree with the argument advanced by the learned Public Prosecutor in this connection that the petitioner having reduced the bulk from a bigger bottle to smaller bottles in the course of his business and trade has committed the offence of bottling as contemplated by Section 4 (1) (h) of the Prohibition Act. In the circumstances I think the conviction is not justifiable and I set aside the conviction and sentence.

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