

In Re: Mareedu Somaiah and ors.

In Re: Mareedu Somaiah and ors.

SooperKanoon Citation : sooperkanoon.com/809885

Court : Chennai

Decided On : Dec-19-1944

Reported in : AIR1945Mad409; (1945)1MLJ334

Appellant : In Re: Mareedu Somaiah and ors.

Judgement :

ORDER

Happell, J.

1. This criminal revision case arises out of C.C. No. 36 of 1943 in the Court of the Sub-Divisional Magistrate of Gudivada which was itself a case, although the convictions were made Under Sections of the Penal Code, which arose out of a search carried out under the provisions of the Madras Abkari Act. The facts were, these: The Sub-Inspector of Excise, Gudivada, obtained a warrant from the Stationary Sub-Magistrate, Gudivada, Under Section 30, Madras Abkari Act, for the search of the house of the house of D.W. 6. He proceeded to carry out the search on 11th December 1942 with his two peons, P. Ws. 3 and 4 and a panchayatdar whom he took with him, P. W. 2 The search docs not appear to have been entirely unanticipated as on their arrival, while they were standing outside the wall of the yard attached to the house, they saw from the door of the yard accused 4 run out of the house carrying a bottle. P. WS. 3 and 4 got over the wall and P.W. 3 caught hold of accused 4. Thereafter, according to the evidence, the other accused came out of the house and accused 1 and 2 tried to rescue

accused 4 while accused 3 at a later stage threatened the party with violence if they attempted to enter the house. On these facts, accused 1 and 2 were convicted of an offence Under Section 225, Penal Code, and accused 4 of an offence Under Section 225(b). Accused 3 was acquitted. On appeal to the Sessions Judge of Kistna, the convictions were confirmed but the fines which were imposed by the lower Court were reduced to its. 50 in the case of each of the accused 1 and 2 and to Rs. 30 in the case of accused 4. The learned Sessions Judge took the view that the charges were made out but that resistance had not been very serious. There was evidence that justified the findings that accused 4 escaped from arrest and that accused 1 and 2 assisted her escape, and the findings of the lower Courts on these points cannot be challenged in revision. The argument put forward in support of the revision petition, an argument that was also advanced in the lower Courts, is that the convictions were bad because the arrest of accused 4 was itself illegal. It is conceded that Section 31, Madras Abkari Act, does not apply and that the arrest was made Under Section 34. Section 34 provides that:

Any officer of the Abkari, Salt, Police, Land Revenue or Customs Departments, and any other person duly empowered may arrest without warrant in any public thoroughfare or open place other than a dwelling house any person committing an offence punishable Under Section 55 or Sections 57 or 58 of the Act.

2. There is no clear description of the enclosure in which the arrest was made to be found in any, one place in the evidence of the witnesses. It appears, however, from the evidence of P. WS. 1 and 2 that the place where the arrest was made was a yard attached to the dwelling house of accused 4, that it was surrounded on all sides by a wall (a fairly high wall as two of the peons got on to a bandy in order to get over it) and that access to the enclosure could be obtained only through a door or perhaps doors. The wording of Section 34 is rather curious as it is surprising on a first impression to find the words 'open place' used as if they might include a 'dwelling house'. A reference, however, to the definition of a 'place' given in Section 3(20) of the Act affords some guidance as to the meaning that must have been intended by the Legislature to be attached to the words 'open place'. It is stated in Section 3(20) that 'place' includes also 'a house, building, shop, tent

and vessel.' The only authority for the interpretation of the words, to which learned Counsel have been able to refer me is contained in a note to Section 34, Abkari Act, in the 5th edition of the Madras Law Journal's Edition of the Civil Court Manual. Reference is there made to Venkata Reddi Emperor 2 C. L.R. 212. The report referred to does not appear to be available in Madras. But the note on the report is 'the word, 'open' is opposed to 'closed.' A private open ground attached to a house, though enclosed by walls, but which has an opening having no door is an 'open' place within the meaning of Section 34.

3. This seems to me to be correct. An arrest without warrant cannot be made Under Section 34 of the Act in a dwelling house; but it may be made in any other place, and place includes a house, building, shop, or vessel, provided that the place is open. The difficulty in each case will be to decide, if the place is not a dwelling house, whether it is 'open.' The learned Sessions Judge refers to a note in the Madras Excise Manual, Vol. I at p. 19 to the effect that the words 'open place' used in this section include an open shop, building or house other than a dwelling house. The note, of course, is no authority for the interpretation of the section; but for the reasons given above, the statement that 'open place' used in this section includes an open shop, building, or house other than a dwelling house is correct. The learned Sessions Judge, however, begs' the question when he goes on immediately to say 'clearly an open yard comes within this description,' although he is right in his view that the yard is not a part of the dwelling house. The question is whether the yard is an 'open' yard within the meaning of Section 34. In my opinion, it is not. As far as a picture of it can be made from the evidence, the yard is attached to the house, entirely surrounded by fairly high walls, accessible only through a door and not 'open' to the public. To hold this to be an open place, it seems to me, is virtually to ignore the qualification of 'place' by the word open, and to read Section 34 as if it said simply that an arrest could be made without warrant any where except in a dwelling house. In my opinion, therefore, and I am dealing of course only with the facts of this case, the place in which accused 4 was arrested I was not a public thoroughfare or open place other than a dwelling house within the meaning of Section 34. In that view, the convictions of the accused were bad and must be set aside. The petition is allowed and the fines, if paid, will be refunded.

