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Court : Chennai

Decided On : Apr-22-1909

Reported in : 2Ind.Cas.84

Judge : Benson and ;Miller, JJ.

Appellant : Emperor

Respondent : Moonoosawmy and ors.

Judgement :

1. The accused were charged by the Police with an offence punishable under Section 75, Madras City Police Act, III of 1888, in that they were drunk and disorderly in a certain arrack shop. The Presidency Magistrate acquitted the accused on the ground that an arrack shop is not a place of public resort' within the meaning of Section 75. The Crown Prosecutor, on behalf of Government, appeals against the acquittal on the ground that the Magistrata's decision is erroneous and that the decision is of general importance from the point of view of public order and good conduct.

2. We think that the view of the Presidency Magistrate is erroneous. The words of the section are:

Whoever is found drunk and incapable of taking care of himself...is guilty of any riotous, disorderly or indecent behaviour in any street or thoroughfare in any place of public amusement or resort, or on board any passenger boat or vesse, and

whoever is guilty of any violent, disorderly or indecent behaviour in any Place, Court, office or station, shall be liable on conviction to fine not exceeding 50 rupees or to imprisonment not exceeding one month or both.

3. The Magistrate is clearly wrong in supposing, that the doctrine of ejusdem generis should be applied in considering the scope of the section. The words 'boat or vessel' cannot possibly be regarded as ejusdem generis with street or thoroughfare and there is no more reason for construing any place of public resort 'with reference to that doctrine than there is for applying the same doctrine to the words boat or vessel.' We think that if the words of Section 75 be read in connection with Section 23 of the Act and with due advertence to the mischief which the section is intended to prevent and to the terms of the license under which the shop is kept open, it will be clear that an arrack shop is 'a place of public resort' within the meaning of the section. An arrack shop is on a very different footing from an ordinary private shop. The vend of arrack is a State monopoly and is subject to control by the State. Under the terms of the license the shop-keeper is bound to keep his shop open unless authorised by the Collector to close it permanently or temporarily, and he is also bound to maintain a supply of arrack as prescribed. This connotes a right on the part of the public to resort to the shop to satisfy their legitimate requirements in regard to arrack. Under Section 23, a Police officer is bound to use his best endeavours to apprehend disorderly characters' and for that purpose may without a warrant enter and inspect any drinking shop, gaming house or other place of resort of loose or disorderly characters.'

4. The public have a right to resort to arrack shops and we think that it is a place of public resort within the meaning of the section.

5. It is now six months since the accused were discharged, and the Crown Prosecutor does not press that their retrial should be ordered as the offence was a petty one. He only desires to have the question of law correctly settled. We, therefore, set aside the order of acquittal as made under an erroneous view of the law, but do not think it necessary to order a retrial of the accused.