

Rajamanickam Vs. State

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Court : Chennai

Decided On : Aug-09-1961

Reported in : (1962)2MLJ90

Appellant : Rajamanickam

Respondent : State

Judgement :

ORDER

Ramakrishnan, J.

1. On information the Sub-Inspector of Police P.W. 1 went to a place called Karaikuttai in the outskirts of Thamarapakkam village and caught three persons in the act of illicit distillation of arrack. We are concerned in this revision with accused 1. According to the Sub-Inspector he was engaged in attending to the oven kindling the fire. The Sub-Inspector found at that time various vessels used for distillation besides a boiling mud pot in which there were four gallons of spirit wash. He destroyed the spirit wash at the site but brought the other material objects to the Court. He could not take any mahazar witnesses for witnessing the seizure because according to him the village contained a maximum number of people addicted to drink and he thought that they would not be co-operative. Accused 1 was sentenced to a period of imprisonment and fine and in appeal the learned District Magistrate of North Arcot confirmed the sentence of imprisonment

which was for a period of six months, but reduced the fine to Rs. 100. It has to be mentioned that along with the 1st accused two more persons were prosecuted. They pleaded guilty and were sentenced.

2. It was argued on behalf of the 1st accused, who is the revision petitioner before me, that a proper search warrant has not been obtained and the provisions of Section 165, Criminal Procedure Code, have not been complied with. But the short answer to this argument is that when the police officer has information that illicit distillation was going on in an open place outside the village described as Karaikuttai which is said to be a pond with bunds all round, it requires no search warrant for authorizing him to go to a place so indicated and look for the incident of illicit distillation which according to the information was in progress , at that place. This does not amount to a so called search, requiring a search warrant.

3. It was next contended that the police officer should have destroyed the wash only after complying with the provisions of Section 32 of the Madras Prohibition Act. No doubt the officer has not done so. The learned Public Prosecutor draws my attention to a decision of this Court in Rajabathar v. State 1959 M.W.N. 215, which lays down that the omission to comply with Section 32 of the Prohibition Act will not vitiate the trial and conviction when the other evidence in the case had brought home the offence to the accused beyond all reasonable doubt. At the same time I must point out that Section 32 is a safeguard which the statute has provided and it is necessary to enjoin upon the Police Officers, who make searches and recover fermented wash and the like, that the statutory provision should be complied with. The circumstances that it had been held in a particular case that the omission to comply with this provision did not vitiate the trial, should not be treated as authority for making the statutory provision a dead letter.

4. There remains the question whether the evidence of the Sub-Inspector of Police the solitary witness for the prosecution, is sufficient to sustain the conviction. His evidence is straightforward and the two Courts below have accepted his evidence as adequate to sustain the conviction. I see no ground to differ from the lower Courts. The conviction is upheld. The sentence of six months is the minimum that is provided for the offence. The fine amount is also not excessive.

5. The revision case is dismissed.

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