

In Re: Ramaswami

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Court : Chennai

Decided On : Aug-16-1961

Reported in : (1962)2MLJ93

Appellant : In Re: Ramaswami

Judgement :

ORDER

Veeraswami, J.

1. The Petitioner has been convicted of an offence under Section 4A of the Madras Prohibition Act, 1937, and sentenced to pay a fine of Rs. 150 in default to undergo rigorous imprisonment for one month. He was also charged for an offence under Section 117 of the Motor Vehicles Act, 1939, but he has been acquitted of the charge. The case for the prosecution was that at about 11-15 P.M. while a Mariamman festival was going on, the petitioner was found driving his car on a public road in a state of intoxication. It is not disputed that the petitioner had a permit issued in his favour. The trial Magistrate considered that the evidence of P.Ws. 1 and 2 proved the state of intoxication and that the car while on a public road must itself be regarded as a public place. On that view he found the petitioner guilty of the offence under Section 4A.

2. P.W. 2 is a Head Constable and he asserted in his evidence that he found the petitioner driving his car and when he was stopped, the petitioner talked

incoherently, and was in a state of intoxication. The Head Constable further stated that the petitioner's breath smelt of arrack and his eyes also were red. As against this evidence, there was the evidence of the doctor, P.W. 1. At 12-15 (midnight) on the day of occurrence, namely, 7th January, 1960, the Civil Assistant Surgeon(P.W.1) in the Government Hospital at Erode examined the petitioner. He stated that the petitioner's pupils were dilated and they reacted sluggishly to light, the breath smelt of alcohol and the gait was unsteady. He also found that the petitioner's talk was incoherent and his eyes were congested. Nevertheless, the doctor was positively of the opinion that the petitioner was not under the influence of alcohol. It is true that P.W. 1 examined him about an hour after he was arrested by the Head Constable, P.W. 2. But it is not possible to hold merely on the evidence of P.W. 2, that the petitioner was in a state of intoxication. With all the symptoms that P.W. 2 spoke, it would be possible that a man did not reach the stage of intoxication. Stage of intoxication is in itself a question of fact and has to be determined in the light of the particular circumstances and the state of the particular habits and health of the person said to be intoxicated. The medical evidence in the case does not appear to corroborate the evidence of P.W. 2. In those circumstances, mainly in view of the medical evidence, it seems to me that it is not established beyond doubt whether the petitioner was in a state of intoxication at the time when he was arrested by P.W. 2. This finding entitles the petitioner to an acquittal of the charge under Section 4A.

3. There was another point which was argued before the Court below, namely, whether the car owned by the petitioner could be said to be a public place, merely because at the time when the petitioner was arrested he was in the car which was running through a public place. A public place has been defined in Volume 35 of ' Words and Phrases ' in the American series as ' a place where the public has a right to go and be.' In the same volume another definition given is that a public place in respect of a prohibition of gaming meant ' any house to which all who wished to go night or day, and indulge in gaming.' A road is certainly a public place. But the car is not one into which any member of the public could have access, unlike in the case of a public omnibus which carries passengers. On that view it may not be that a car, merely because it was found running on a public road, is, therefore, a public place within the meaning of Section 4A. But as the

petitioner has succeeded on the other point, it is unnecessary in this case to express a final opinion on the question.

4. The petition is allowed. The conviction of the petitioner is set aside and he is acquitted. The fine if any, paid, will be refunded.

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