

In Re: Rathinam

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Court : Chennai

Decided On : Jul-31-1959

Reported in : (1960)2MLJ449

Appellant : In Re: Rathinam

Judgement :

ORDER

Somasundaram, J.

1. The petitioner was convicted under Section 4(1)(j) of the Madras Prohibition Act for consuming liquor. The evidence of the doctor, who examined the petitioner, is that the pupils of the accused were dilated reacting to light sluggishly and that there was smell of arrack in the breath. On this evidence he was convicted. It is contended before me that the doctor was not authorised under Section 41-A, and therefore his evidence should not be acted upon. It is conceded that the doctor was not authorised under Section 41-A. But the fact he is not authorised does not mean that the evidence he gave is inadmissible. Section 41-A of the Madras Prohibition Act is intended to compel persons to be taken to a doctor and any resistance of submission to an examination entitles the persons to certain penalties according to the provisions of the section. Although under Section 41-A the police shall take him to a doctor, who is authorised, still the evidence given by the doctor, who is not authorised, does not become inadmissible. There is, therefore, no force in the contention.

2. There is another point in the case which though not raised deserves consideration. That is the prosecution has not established that the symptoms exhibited by the accused are symptoms, which must necessarily arise from the consuming of prohibited alcohol. The Supreme Court in *Behram Khurshed Pesikaka v. State of Bombay* (1955) 1 M.L.J. 32 : (1955) A.W.R. 321 : (1955) S.C.J. 73, has pointed out as follows:

The bare circumstance that a citizen accused of an offence under Section 66 (b) is smelling of alcohol is compatible both with his innocence as well as his guilt. That being so, it is the duty of the prosecution to prove that the alcohol of which he was smelling was such that it came within the category of prohibited alcohols and the onus is not discharged or shifted by merely proving a smell of alcohol.

In interpreting the decision of the Supreme Court our Court has held in *Palani Goundan, In re*², that even if the smell, redness of the eyes and dryness of tongue which were found in a particular case, might be explained as due to the accused taking the mixture and tonic, the other two symptoms of incoherent speech and staggering-gait had not been explained. Thus the smell and the dilation of pupil might be explained on the basis of taking alcohol of the exempted category. The prosecution has not, therefore in my opinion, established the guilt of this accused for having consumed prohibited alcohol. Though this point was not raised, still it is open to me to go into this question and consider whether the guilt has been established beyond all reasonable doubt. The guilt has not been so established. The conviction and sentence are set aside and the accused is acquitted.

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