

In Re: Sambandam

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SooperKanoon Citation : sooperkanoon.com/815180

Court : Chennai

Decided On : Oct-10-1969

Reported in : (1970)2MLJ80

Appellant : In Re: Sambandam

Judgement :

B.S. Somasundaram, J.

1. Sambandam, the appellant herein, was convicted by the VI Presidency Magistrate, Saidapet, in C.C. No. 7129 of 1967 for offences under Section 4 (1) (a) of the Madras Prohibition Act and under Section 10 (a) of the Government Order No. Ms. 3031 (Home) dated 1st November, 1958. Under the first count he was sentenced to undergo rigorous imprisonment for three months with a fine of Rs. 200 and for the second offence he was sentenced to pay a fine of Rs. 100. The prosecution arose in the following circumstances. Thiru R.K. Nayar, P.W. 1, the Sub Inspector attached to the North Raiding Prohibition Party got information, at the junction of the Mount Road and Vijayaraghavachari road that some person was moving on the road with contraband liquor. He proceeded for some distance, in the road, apprehended the appellant and recovered from him, the tin M.O. 1 which contained 17 bottles of which seven were brandy and 10 were bottles of tincture zingiberis mitis, (M.Os. 2 to series) under mahazar, Exhibit P-1, attested by his head constable and another constable. The case was charged. The appellant pleaded not guilty to the charges and staged that he had no brandy or

zingiberis bottles with him. Believing the evidence of P.W. 1, the learned Magistrate has convicted the appellant. The correctness of this conviction is now canvassed in the present appeal. The conviction has proceeded on the uncorroborated testimony of the Sub-Inspector, P.W. 1 who claims to have apprehended this appellant at a point very near the junction of Mount Road and Vijayaraghavachariar Road, which is at the time of the seizure. Yet not even one person has been cited as a witness for proving the arrest or the recovery of these bottles. Exhibit P-1 is the mahazar. P.W. 1 could have at least examined the Head Constable who has attested it. When a mahazar has been prepared and attested by witnesses it is desirable and in some cases it may even be necessary from the stand point of the prosecution to examine at least one such witness in addition to the police officer who actually seized the materials. Vide *Muthukrishnan v. State* (1961) M.W.N. 706 : (1961) M.W.N. 189. Next it is contended that the prosecution has not proved that the bottles which were seized contained liquor within the mischief of the Prohibition Act. The prosecution in cases of this kind must establish by evidence that the bottles contained prohibited liquor. In other words, the prosecution should establish that the commodity in question comes under one or other of the various items described in the definition of liquor in the Act. Merely trusting to the smelling sense of these Prohibition Officers, and basing a conviction, on an opinion expressed by those officers under the circumstances cannot justify the conviction of the accused *State of Andhra Pradesh v. Madiga Boosanna* : 1967 CriLJ1398 . Even this evidence is not available in the present case and except saying that the bottles seized with the seals were bottles of brandy and tincture zingiberis mitis, the Sub-Inspector has not said anything else. The conviction is not correct. Both the conviction and sentences are set aside. The appellant is acquitted of the offences under which he stands convicted. The fine if collected shall be refunded to him. the bail bond shall stand cancelled.