

**In Re: Narayana and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/826631](http://sooperkanoon.com/826631)

**Court :** Chennai

**Decided On :** Apr-25-1924

**Reported in :** AIR1924Mad816

**Appellant :** In Re: Narayana and ors.

**Judgement :**

ORDER

**Spencer, J.**

1. The facts of this case are not disputed. They are that a pot of toddy, in excess of the quantity, which one individual may possess, without license, was brought by a woman named Hanumakka to the house of the complainant K. Lakshmiah. The three petitioners and one man, who has been discharged, came to the complainant's house. The first petitioner, who, according to the Revenue Inspector, was an acting taliari, went inside the house and brought out the pot and placed it in the verandah, and all the three petitioners remained guarding it, until the police, to whom they sent a message about the commission of an abkari offence, arrived. When the Sub Inspector of police arrived, he completely turned the table on the petitioners and prosecuted them for house trespass. They were convicted, and when they appealed to the Sub Divisional Magistrate, their appeal was dismissed. Now a private individual has no authority to seize and detain liquor, which he believes to be liable to confiscation under the Abkari Act. (Madras Act I of 1885) Only Officers of a certain rank of the Revenue, Police and Abkari

Departments are empowered to enter places, where liquor is illicitly sold or stored. Technically, it does not signify that the first petitioner was acting as substitute for an absent taliari, or that the 3rd petitioner's appointment as taliari had ceased two days before this case. Even if they had been permanent taliaris of the village, they would have had no legal right to do what the 1st petitioner is said to have done, viz., gone inside a private house, without the permission of its owner and fetched out a pot of toddy.

2. But the facts (1) that an offence under the Abkari law was apparently committed by the complainant, (2) that the petitioners may have thought that it was a taliari's duty to stop illicit transport and possession of liquor, and (3) that they sat and watched the pot till the police came, throw a flood of light on the question, whether they acted with bona fide, or with a criminal intention.

3. According to the decision of the majority of the Full Bench in Vullappa v. Bheema Rao [1918] 41 Mad. 156, the offence of trespass is not complete, unless there is an intent to commit an offence, or to intimidate, insult, or annoy some one, in possession of property. It is not enough that the accused should know that his act is likely to have such an effect. The complainant deposed that the petitioners intended to annoy him, because he was a witness in a case against one Narasimhayya, who according to him is their friend, but he contradicted himself on the point whether he had already deposed against Narasimhayya, or whether he was about to do so. His statement that the accused announced that they had taken the toddy, because he had given evidence against Hanumayya, is improbable and is not corroborated by the woman who brought the toddy, or by the complainant's son, whose version is that the accused offered to return the pot of toddy, if complainant did not give evidence against Narasimhayya. The Complainant's statement, Ex. III, that the petitioners objected to the pot being taken away, till the toddy was measured, shows that their real object was to see that the Abkari offence which they had detected was not hushed up.

4. The Stationary Sub-Magistrate has not recorded a finding, as to the intention of the accused. The sub-Divisional Magistrate observes that there was no necessity for the accused to stop at the complainant's house, with the toddy, till the police

came, if it were not to annoy him. I entirely disagree. I think their remaining there indicated their good faith. When the action of the accused was open to two constructions, one criminal and the other honest, I think that the appellate Court should not have assumed that it was criminal.

5. I therefore set aside the convictions and direct the fines imposed on the accused to be refunded.

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