SUPREME COURT OF INDIA

Vijendrajit Ayodhya Prasad Goel

Vs.

State of Bombay

Crl.A.No.42 of 1952

(Mehr Chand Mahajan, Vivian Bose and B. Jagannadhadas, JJ.)

13.03.1953

JUDGEMENT

MAHAJAN, J. :-

1. The appellant along with one Kishenchand was charged under S. 66 (b) read with S. 81, Bombay Prohibition Act, 25 of 1949, on the allegation that on 8-6-1950 the two accused were found in possession of twenty gallons and eight drums of rectified spirit without a permit as required by law. The defence was that these articles were not in their possession or in the godown charge of the appellant. The Presidency Magistrate held that it was proved beyond reasonable doubt that the bottles, drums and jars containing the rectified spirit were found in the godown raided by the police. He further held that as admittedly the appellant was in charge of the godown, the inference was that he was in control and possession of the articles found therein. In the result he convicted the appellant and sentenced him to three months' rigorous imprisonment and, fine of Rs. 1000. Against the decision of the Presidency Magistrate, an appeal was filed in the High Court but was summarily dismissed. This appeal is before us by special leave.

2. The principal question raised in this appeal is that there is no evidence on the basis of which it could be held proved that the appellant was found in possession of twenty gallons eight drums of rectified spirit on 8-6-1950. It was contended that the Magistrate was not justified in making use of the statement of the accused made under S. 342, Cr. P. C., for the purpose of finding that fact. It was said that the godown was owned by a limited body, Frank Rose and Co., Ltd., and the appellant was paying rent for the godown under their instructions, and that in the absence of evidence that the appellant ever visited the godown or had anything to do with the business carried on therein, it could not be held that the rectified spirit recovered from the godown was in his possession. This contention might have had force if the conviction of the accused was based merely on his statement recorded under S. 342, Cr. P.C., which could not be regarded as evidence, but this is not so.

3. Pitalwalla, P. W. 1, gave evidence that the godown from where the rectified spirit was recovered was in possession of the appellant. He was not cross examined on this point. P. W. 3 also described the godown as the godown of the appellant. He was also not questioned on this point. If the fact that the godown was in the possession and charge of the appellant had been denied, further evidence would have been led on the point as the prosecution had the rent receipts signed by the appellant in their possession. As the appellant admitted that he was in charge of the godown, further evidence was not led an the point. The Magistrate was in this situation fully justified in referring to the statement of the accused under S. 342 as supporting the prosecution case concerning the possession

of the godown. The contention that the Magistrate made use of the inculpatory part of the accused's statement and excluded the exculpatory part does not seem to be correct. The statement under S. 342 did not consist of two portions, part inculpatory and part exculpatory. It concerned itself with two facts. The accused admitted that he was in charge of the godown, he denied that the rectified spirit was found in that godown. He alleged that the rectified spirit was found outside it. This part of his statement was proved untrue by the prosecution evidence and had no intimate connection with the statement concerning the possession of the godown.

4. Mr. Umrigar next argued that even if the appellant was in possession of the godown, from that circumstance an inference could not be drawn that the rectified spirit recovered from the godown was necessarily in his possession or was there with his knowledge. It was not suggested that the godown was accessible to all and sundry. A servant working under the appellant was actually inside the godown filling the bottles with the rectified spirit. As many as 108 bottles and two drums of rectified spirit and various other articles were found in this godown. All that was suggested was that these had been planted there by the police but it was not said that as the godown was accessible to several other persons they might have kept the spirit there. The suggestion that the police placed the articles in the godown cannot bear examination in view of the evidence and in these circumstances the Presidency Magistrate was justified in drawing the inference that these articles were in possession of the appellant who was in possession of the godown, when the defence of the accused that the articles were found outside the godown was negatived. Be that as it may, in our view this Court would not be justified in disturbing the decision of the Courts below on special leave merely on the ground that perhaps a different inference could also have been drawn from the facts found in the case.

5. Mr. Umrigar next contended that only one bottle out of the articles recovered at the raid was sent for analysis and that it was not proved that all the bottles and the drums that were recovered from the godown contained rectified spirit. He said these might well have contained phenyle, the manufacture of which the company admittedly was carrying on in that godown. This argument cannot be seriously considered. It was wholly unnecessary to send all the bottles recovered by the police in the presence of panches and which contained the same stuff for purpose of analysis. This argument is therefore rejected.

6. It was next contended that no permit was necessary for possession of rectified spirit because it falls in the category of medical preparations. This contention again is without substance. No evidence has been led that this falls in the category of medical preparations. On the other hand, rectified spirit clearly falls within the definition of an intoxicant and its possession without permit is prohibited by the provisions of S.66 (b) of the Act. Section 2 (22) of the Act defines an "intoxicant" as including Iiquor. Sub-section (24) defines liquor as including spirits of wine, methyleted spirit wine, beer, toddy and all liquids consisting of alcohol. From the chemical analyst's report it appears that the rectified spirit found in the possession of the appellant was 94 v/v of ethyl alcohol. It therefore clearly fell within the definition of intoxicant, as given in S. (22) of Act. This contention is therefore repelled.

7. For the reasons given above, we see no force in this appeal and it is hereby dismissed.

Appeal dismissed.

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