

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 07.10.2017

PRONOUNCED ON: 11.10.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

Crl.A.No.189 of 2017

Venkatesan

Appellant

Vs

Inspector of Police, Prohibition Enforcement  
Wing, Sevenwells, Chennai

Respondent

Prayer:- This Criminal Appeal is filed against the judgement dated 20.02.2017 made in SC.No.159 of 2016, by the VI Additional Sessions Judge, Chennai.

For Appellant : Mr.T.Saravanan

For Respondent : Mr.K.Madhan, PP

JUDGEMENT

This appeal has been filed, against the judgement of conviction and sentence under Section 4(1)(a) of the Tamil Nadu Prohibition Act, 1937, dated 20.02.2017 made in SC.No.159 of 2016, by the VI Additional Sessions Judge, Chennai.

2. The accused was actually charged under Section 4(1)(a) read with 4(1)(A) of the Tamil Nadu Prohibition Act, 1937. The accused was found guilty under Section 4(1)(a) and acquitted under Section 4(1)(A).

3. The Trial Court had noted that the accused was under custody

from 13.7.2014 to 15.7.2014 during his initial remand period. After setting off the said period, the accused was convicted and sentenced to undergo Simple Imprisonment for three months and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for three weeks.

4. It is the case of the Prosecution that on 13.7.2014 at about 6.00 a.m. when the raiding party, who were then police officials attached to Flower Bazar prohibition Wing, headed by a Inspector of Police, Sub Inspector of Police, Head Constables, were roving around in search of offenders of prohibition. Opposite to Chennai Corporation Building, Jeans Street, they noticed the accused in possession of two hand bags, containing 10 numbers of 180 ml Mens Club brandy bottles. The seals were broken, but closed with covers. The accused was also in possession of 17 numbers of 180 MI Green Magic brandy bottles, which were not opened. The bottles had been manufactured at the Union Territory of Pondicherry. It was stated that the raiding parties smelled the liquor bottles, wherein toxic smell emanated from it and their eyes got irritated and consequently, they arrested the accused at about 6.50 a.m. on the same day and after giving due intimation to the relatives of the accused, seized the liquor bottles and investigation was commenced. Samples were sent to the Forensic Department. Thereafter, charge sheet was laid before the 16<sup>th</sup> Metropolitan Magistrate Court, George Town, Chennai in PRC.No.28 of 2016. The matter was committed to the Principal Court of Sessions at Chennai and taken cognizance in SC.No.159 of 2016.

5. After framing necessary charges under Section 4(1)(a) read with

4(1)(A) of the TNP Act, the accused was questioned as to the incriminating circumstances, under Section 313 of Cr.PC and the accused denied them as false and pleaded not guilty of the charges. To establish the charges, the Prosecution had examined PW.1 to PW.5 and marked Ex.P1 to Ex.P11 and also marked MO.1 to MO.4 . The accused did not examine any witness.

6. It is seen that there was no independent witness. The bags said to have contained the bottles were also not seized and the auto was not seized. Time and date of arrest were not given in the arrest memo. The Trial Court held that under special circumstances, independent witnesses are not necessary. However, the place, where the accused was arrested at 6.00 a.m. near Chennai Ribbon Building, cannot be said to be a place which is a deserted place. It is always crowded since it is very next to the Central Railway Station. There is no explanation as to why independent evidence was not procured.

6. The learned Public Prosecutor for the Respondent stated that out of three months Simple Imprisonment, the accused had already undergone two months Simple Imprisonment and set off could be given. But, even otherwise, conviction cannot be made without any legally acceptable evidence. The conviction of an auto driver would seriously impair his future prospects. The entire case bristles with contradictions.

7. It is also seen that the bottles were opened, when they were seized, which also shows that there is a high improbability of the bottles actually being seized. It is also seen that only six bottles were produced. There is a contradiction in the evidence of the Prosecution on the very same aspect. It is

also seen that the witness admitted that there was a number of people present at the time of arrest. However, no independent witness was examined on the side of the Prosecution. The auto was not seized. Even though the

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possession is sufficient, in this case, since there are no independent witnesses, the seizure itself becomes doubtful. In the arrest report, the time and date of arrest had not been given. This also leads to a doubt as to when exactly the accused was arrested. All these factors point that the conviction and sentence imposed by the Trial Court under Section 4(1)(a) of the TNP Act cannot be sustained.

8. In the result, this appeal is allowed. The impugned judgement of conviction and sentence dated 20.02.2017 made in SC.No.159 of 2016, by the VI Additional Sessions Judge, Chennai is set aside. The Appellant is acquitted of all the charges levelled against him. Fine amount if any paid by the Appellant shall be refunded.

WEB COPY 11.10.2017

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

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To:

1. The VI Additional Sessions Judge, Chennai

Pre-Delivery Judgement in  
Crl.A.No.189 of 2017