

APPELLATE CRIMINAL—FULL BENCH.

Before Mr. Justice Kernan, Mr. Justice Muttusámi Ayyar,
Mr. Justice Parker, and Mr. Justice Wilkinson.

QUEEN-EMPRESS

against

BELLARA.*

1887.
Sept. 7.
Nov. 23.
1888.
Jan. 17.

*Abkári Act (Madras), ss. 29, 55 (e)—Rule forbidding delegation by licensee
of authority to draw toddy, ultra vires.*

Under s. 29 of the Madras Abkári Act, the Governor in Council made and published a rule on 8th February 1887, whereby it was declared that no licensee-holder could delegate his authority to draw toddy, unless under exceptional circumstances, to any person :

B, the son of a licensee, drew toddy with his father's permission. He was convicted under s. 55 (e) of the Act :

Held that the rule was *ultra vires* and the conviction bad.

CASE referred, for the orders of the High Court, under s. 438 of the Code of Criminal Procedure, by S. H. Wynne, Acting District Magistrate of South Canara.

On the 7th September 1887, the case was referred to a Full Bench by Collins, C.J., and Parker, J.

The facts necessary, for the purpose of this report, are set out in the judgment of the Full Bench (Kernan, Muttusámi Ayyar, Parker, and Wilkinson, JJ.).

The Public Prosecutor (Mr. Powell) for the Crown.

JUDGMENT.—One Bellara has been convicted under s. 55, cl. (e) of the Madras Abkári Act for drawing toddy under cover of a license granted to another person and sentenced to a fine of Rs. 15, or, in default, to fifteen days' rigorous imprisonment.

Bellara was the son of the licensee, and said that he was drawing the toddy, because his father had a boil on his arm and could not ascend the tree.

The case is a similar one to that decided by Muttusámi Ayyar and Brandt, JJ., in December 1886 (Criminal Revision Case No. 645 of 1886), in which it was held that the license was sufficient authority for the drawing of toddy by the agent of the licensee, or

* Criminal Revision Case No. 324 of 1887.

by a person acting under his authority. If this ruling is to be followed, the conviction should be set aside; but since the ruling above referred to, the Governor in Council has, under s. 29 of the Act, framed and published the following rule for the drawing of toddy in the district of South Canara (*vide* Fort St. George Gazette, 8th February 1887, Part I, page 102):—

“(3). A license-holder may tap and draw toddy from any number of trees within the area mentioned in his license, but no tree may be tapped or toddy drawn by any person other than himself under cover of his license. Provided that, when the licensee becomes unable by prolonged illness to draw toddy, the potail of the village may, at his request and subject to the approval of the tahsildar, allow a relative or servant named by him to tap and draw toddy in his stead.”

In this case, therefore, the son committed no offence, unless the rule made by the Governor in Council operates to create one, and the question is whether the Governor in Council has power to make a rule forbidding the drawing of toddy by any person other than the licensee except in the case of prolonged illness, and then only subject to the approval of the tahsildar.

Section 29 of the Act gives power to the Governor in Council to frame rules (cl. o) “generally to carry out the provisions of this Act;” but, as pointed out by the Division Bench in Criminal Revision Case No. 645 of 1886, s. 64 of the Act, read in connection with s. 55, clearly shows that the intention of the legislature was to prohibit the drawing of toddy without a license—not to prevent the delegation of the actual work to a servant or agent.

Section 21 declares that, when the exclusive privilege of manufacturing toddy has been granted under s. 16, the Governor in Council may declare that the written permission of the grantee to draw toddy shall have, within the area to which the privilege extends, the same force and effect as a license from the Collector for that purpose under s. 12. It was thus clearly the intention of the legislature that no toddy should be drawn except under the authority of a Collector’s license or of a renter’s permit, the intention being to protect the exclusive right of manufacturing toddy by the holder of a license. Such a condition precedent is not, however, inconsistent with the power of delegation of the actual work.

The Public Prosecutor refers to s. 11, which deals with permits

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for the transport of liquor, and contends, with reference to the last clause, that where the legislature has intended permits to include servants and agents, it has expressly said so. He admits, however, that the second clause of s. 64 cannot be reconciled with his construction of ss. 12 and 21.

The Act should be construed so as to give effect to all its provisions, and we cannot admit that the second clause of s. 64 shall be limited in its application to the holders of permits for the transport of liquor only. Such a construction is not permissible under the plain words of the section.

It is then urged that the licensee has accepted a license under s. 24, in which the provisions embodied in the rule have been reproduced; but if it was *ultra vires* for the Governor in Council to frame the rule, it was equally *ultra vires* to insert the same conditions in the license.

We were referred to the decision of a Division Bench of this Court in Criminal Revision Case No. 141 of 1887, and it must be admitted that this decision is inconsistent with that in Criminal Revision Case No. 645 of 1886, which was decided by a different Bench; but in Criminal Revision Case No. 141 of 1887, the Public Prosecutor was not instructed to appear, and the case was not argued. The former ruling was not, therefore, brought to the notice of the Bench, and after hearing the point argued, we are not prepared to assent to it.

It appears to us that the Act clearly contemplates the delegation of work by the holder of a license or permit to draw toddy, and we apprehend that the power given to the Governor in Council to frame rules "to carry out the provisions of the Act" must be exercised within the limit which the Act recognizes. On this ground, we set aside the conviction and direct that the fine be refunded.
