

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Phillips.

*Re M. MUTHAYA (ACCUSED), PETITIONER.**

1915,
October 27.

Abkari Act (Madras Act I of 1886), ss. 53 and 64—Offence under section 56 not by licensee but by his depot-writer—Conviction, legality of.

Sections 64 and 56 of the Abkari Act (Madras Act I of 1886) should be read together and not only the licensee but also the actual offender is liable to prosecution for offences under section 56 of the Act.

Re Sudalaimuthu (1886) 1 Weir's Cr. R., 647, followed.

PETITIONS under sections 435 and 439 of the Code of Criminal Procedure (Act V of 1898), praying the High Court to revise the judgment of Rao Bahadur C. GOPALAN NAYAR, Sub-Divisional Magistrate of the Mangalore Division, in Criminal Appeal No. 100 of 1914, preferred against the judgment of M. ANANTAN NAYAR, the Stationary Second-class Magistrate of Mangalore Taluk, in Calendar Case No. 301 of 1914.

The following facts of the case are taken from the judgment of the lower Appellate Court :—

“Appellant is the depot-keeper of Malki and prosecution witness No. 3, the shop-keeper's assistant of shop No. 4, Karaad. Prosecution witness No. 3 paid for two gallons of arrack and the depot-keeper issued arrack which was seized by the Sub-Inspector, prosecution witness No. 1, on the road twenty-five yards away from the shop. The seals were intact and the arrack was measured and tested and found to be 1 gallon 45 drams of arrack of 32.1 strength, whereas the permit which accompanied it showed that the appellant sold only one gallon. The contents of the cask from which the arrack was sold, were tested and the strength was found to be 31.7.

“The Sub-Magistrate convicted the depot-keeper for not issuing a proper permit for transport of arrack. The shop-keeper's man (prosecution witness No. 3) paid for two gallons and got a gallon 45 drams and yet in the permit only one gallon is mentioned. The only inference is that diluted arrack was issued for sale to the public and a smaller quantity shown in the permit so that the excess issued may not be found out by reference to the accounts”.

* Criminal Revision Case No. 261 of 1915 (Criminal Revision Petition No. 212 of 1915).

Re MUTHAYA. The Appellate Court confirmed the conviction. The accused thereupon preferred this revision petition.

K. Ramnath Shenai for the petitioner.

P. R. Grant for the Public Prosecutor for the Crown.

AYLING AND
PHILLIPS, JJ.

The following Order of the Court was delivered by
AYLING, J.—It is argued that petitioner being merely the depot writer and not the licensee, is not liable to prosecution under section 56 of the Abkārī Act. It has been held by a bench of this Court in an unreported case—*Re Sudalximuthu*(1)—that sections 64 and 56 must be read together, and that not only the licensee, but the actual offender (in this case the petitioner) is liable to prosecution for an offence under section 56. Following this, we must reject petitioner's contention.

No other ground for interference is shown. The petition is dismissed.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Napier.

RANGA AYYANGAR AND SIX OTHERS (PLAINTIFFS), APPELLANTS,

v.

NARAYANA CHARARI *alias* CHAKRAVARTHI VIJAYA

RAGHAVA CHARARI AND FOUR OTHERS (DEFENDANTS),

RESPONDENTS.*

Transfer of Property Act (IV of 1882), ss. 60, 67—93—Suit for redemption—Previous suit by mortgagee for sale—Decree for sale—Decree in favour of mortgagor as defendant, for redemption and recovery of possession in execution—Decree, not executed by mortgagee or mortgagor—Suit for redemption by mortgagor, maintainability of—Res judicata.

Where a mortgagee sued for sale on a mortgage bond of 1864 and obtained a decree in 1872 which contained a provision, in favour of the mortgagor who was a defendant therein, for redemption and recovery of possession of the mortgaged lands in execution of the decree but the decree was not executed by either party.

Held, that a fresh suit instituted by the mortgagor for redemption of the mortgage was barred by the rule of *res judicata*.

(1) (1886) 1 Weir's Cr. R., 647.

* Second Appeal No. 329 of 1914.

1915.
October 22
and
November 1.

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