

NARASIMHA
RAO
v.
PAPUNNA.
KRISHNAN, J. in the deed, belonging to the vendor is not sufficient to take it out of that principle as the finding is that it was not intended that the deed should affect the land in any way.

On this view the sale-deed, Exhibit A, must be taken to have not been properly registered; and the title to A Schedule properties was therefore not validly conveyed to the eighth defendant.

The next question is as to limitation. Article 44 does not apply as there was no sale at all in law to be set aside. See *Narayanan v. Lakshmanan* (1) and *Petherperumal Chetty v. Muniandy Servai*(2). The article really applicable is article 144 but the period required for it has not expired yet. There is thus no bar by limitation.

K.R.

APPELLATE CRIMINAL.

Before Mr. Justice Abdur Rahim and Mr. Justice Spencer.

VELAYUDA MUDALI AND OTHERS, ACCUSED
(PETITIONERS),

v.

KING-EMPEROR.*

1919,
December
18.

Madras City Police Act (III of 1888), sec. 76—Breach of condition of license by servants of license-holder—Conviction not only of license-holder but of servants also, propriety of.

Under section 76 of the Madras City Police Act, a licensee under the Act is liable to punishment for a breach of the conditions of the license, whether committed by himself or his servants. But the section does not contemplate proceedings against the servant or agent of the licensee.

CRIMINAL REVISION PETITIONS under sections 435 and 439 of the Criminal Procedure Code to revise the convictions and sentences passed on five persons by MUHAMMAD IBRAHIM SAHIB, Presidency Magistrate, Madras, under section 76 of the Madras City Police Act.

In these cases one Velayuda Mudali, who was the holder of two licenses issued to him under the Madras City Police Act

(1) (1916) I.L.R., 39 Mad., 456. (2) (1908) I.L.R., 35 Calc., 551 (P.C.).

* Criminal Revision Cases Nos. 654 to 657 of 1919 (Criminal Revision Petitions Nos. 560 to 563 of 1919).

for the purpose of selling arrack and roasted mutton in a building within the City of Madras and four of his servants who were in charge of his shop, were charged under section 76 of the Madras City Police Act with having kept open the shop, and with having sold arrack and mutton, after the hour allowed by the license. The licensee and his servants denied these facts; the licensee pleaded in addition, that even if the facts were as stated in the charge, he was not liable to be convicted as he was not present in the shop at the time and his servants were then in charge of it. The Magistrate found that the shop was kept open and that the sales took place after the hour allowed by the license. He also held that even if the licensee was absent from the shop at the time he was liable under the section. He accordingly convicted the licensee and his four servants. The accused preferred these Revision Petitions.

VELAYUDA
MUDALI
v.
KING-
EMPEROR.

E. L. Thornton for petitioners.

The Crown Prosecutor for the Crown.

ABDUR RAHIM, J.—One Velayuda Mudali had licensed premises for sale of arrack and mutton in this town, and he and his servants have been found by the Presidency Magistrate, in the four cases that are before us, guilty of having kept open the arrack shop after 8 p.m. and also of carrying on the business of sale of vegetables and mutton after the same hour. We are asked to say in Criminal Revision Case No. 654 that the arrack shop was not open after 8 p.m. but the facts found by the Magistrate are that the Inspector of Police noticed a large crowd in front of the shop, and that when he went in that direction somebody gave the alarm, and people began to disperse, and some six or seven men walked out of the verandah into the street, the street door was locked, and defence witness No. 3, one of the employees of the licensee was watching at the door. He (the Inspector) went in and found thirteen persons concealing themselves in the terrace of the house and five or six more in the latrine. When he entered lights were switched off. Upon these facts it seems to me to be clear that the shop was kept open. The mere fact that it purported to be closed would not make any difference, while a man was kept at the door to open it for any customer to come in. It would be keeping the shop open within the meaning of the law so long as members of the public had access to the shop.

ABDUR
RAHIM, J.

VELAYUDA
MUDALI
v.
KING
EMPEROR.
—
ABDUR
RAHIM, J.

The Presidency Magistrate found the accused guilty of the charges of keeping open the arrack shop and of conducting sales after 8 p.m. Whether the conducting of the sales after 8 p.m. by itself may be an offence or not the keeping open of the shop is an offence being in breach of the license granted by the Police. I do not see therefore any reason for saying that the offence charged had not been made out.

Similarly as regards the breach of the condition with respect to the shop for selling mutton the Magistrate found that mutton was kept for sale in the same premises where the arrack is sold, and I do not think that we can interfere in revision with that finding.

These being the facts, two questions were argued before us, that under section 76 of the City Police Act, the holder of the license could not be convicted if, as a matter of fact, he was not in the premises when the offence was committed, that is to say, when the shop was kept open for selling mutton or when mutton was exposed for sale after the fixed hour; and that only his servants who were in charge of the premises at the time could be convicted under that section. The section undoubtedly is most unhappily worded and it is very difficult to construe it. It says—

“For any breach of any of the conditions of a license granted under this Act, the offenders shall be liable on conviction to fine not exceeding one hundred rupees and such fine may be recovered from the person licensed, notwithstanding that such breach may have been owing to the default or carelessness of his servant or agent in charge of the shop or place. Any person so convicted shall also be liable to the forfeiture of his license at the discretion of the Commissioner.”

The Act previous to this Act (Act III of 1888) was VIII of 1867, and the section of the old Act corresponding to section 76 of the present Act was 29. That section was in these words:—

“A breach of any of the conditions of a license granted under the last preceding section shall be punishable by a fine not exceeding one hundred rupees and such fine shall be recovered from the person licensed notwithstanding that such breach may have been owing to the default or carelessness of the servant or other person in charge of the shop or place of sale. Any person so convicted shall also be liable to the forfeiture of his license at the discretion of the Magistrate or of the Commissioner of Police.”

VELAYUDA
MUDALI
v.
KING-
EMPEROR
—
ABDUR
RAHIM, J.

It would seem that under section 29 of the old Act only the licence-holder was liable to be convicted and that the fine was to be recovered from him. It may be that it was not necessary to provide that the fine was to be recovered from him although the breach was caused by the default or carelessness of the servants. But it is not to be necessarily inferred therefore that any person other than the licensee could be proceeded against under this section. The last sentence strongly suggests the construction that only the licence-holder was the person aimed at, because the section speaks of the person so convicted being also liable to the forfeiture of his licence. It cannot be said that the servant or agent of a licence-holder has any licence to forfeit. In section 76 of the present Act the language is different in two respects. First of all the word 'offenders' is used; and instead of saying that the fine shall be recovered as in section 29 of the old Act it says that the fine may be recovered from the persons licensed. As regards the first it may be pointed out that here as in section 29 of the old Act the last sentence speaks of "any person so convicted," and does not use the plural, and by saying that the fine may be recovered instead of shall be recovered as in section 29 of the previous Act the legislature cannot be said necessarily to have implied that persons other than the holder of the licence could be convicted under section 76. If it was the intention of the legislature to depart in this respect from what was previously the law, it might be expected that it would have made its meaning clear. We must further remember that what is punishable under the Police Act is the breach of the conditions of the licence which would really be a breach of a contract with the licensing authority. The licence is granted to the licence-holder and it is he that is responsible for the observance of the conditions of the licence. The licensee-holder, often, if not invariably carries on business through the agency of servants, or agents, but it is he (the licence-holder) that undertakes to conform to the conditions of the licence.

We were referred to section 64 of the Abkārī Act of 1886 which was enacted two years prior to the Police Act of 1888, with which we are now dealing. That section expressly makes the holder of the licence as well as the agent or servant who

VELAYUDA
MUDALI
v.
KING-
EMPEROR.
—
ABDUR
RAHIM, J.

actually commits a breach of the conditions of a licence punishable and section 55 which is referred to in section 64 also clearly proceeds on the same basis. But we cannot presume therefore that the legislature in enacting section 76 of the Police Act intended to proceed on the same lines as section 64 of the Abkārī Act. On the other hand the inference should be the reverse.

There is another difficulty in holding that under section 76 both the holder of the licence and his agents and servants may be convicted and punished, for it is easy to imagine cases in which the distribution of fines among the licensees and the servants or agents engaged by him in the business would give rise to considerable difficulties.

On the whole the proper interpretation of section 76 would appear to be that only the licence-holder is liable to punishment for breach of the conditions of a licence. The result is that I would uphold the conviction and sentences in Criminal Revision Cases Nos. 654 and 656 of 1919 and set aside the conviction and sentences in Criminal Revision Cases Nos. 655 and 657 of 1919. The fines if paid in the latter cases will be refunded.

SPENCER, J.

SPENCER, J.—I agree with my learned brother that there is evidence upon which the Presidency Magistrate in these cases was entitled to come to the conclusion that the arrack shop was kept open and that business was being done in the mutton shop after closing hours, and therefore acting as a court of revision we should not interfere with the finding of guilty on the evidence. On the question of law I am also in agreement. In my opinion if a shop is kept open after a prohibited hour by a licensee or by persons under his control and if he has a number of servants there is nevertheless only one breach of the covenant in the licence and therefore it would be unreasonable if both the licensee and all his servants were to be convicted and separately fined as if each had committed a separate offence. The difficulty in applying section 76 of the City Police Act has arisen out of the use of the word 'offenders' in the plural in the section, but the section goes on to provide that the 'fine' in the singular may be recovered from the person licensed and it also provides that any person (in the singular) so convicted should be 'liable to the forfeiture of his licence.' As my learned brother has pointed out, as there is no licence issued to the servant, it cannot

be said that he would be liable to the forfeiture of his licence. This is an indication that it was in the contemplation of the legislature that only the licensee should be tried for the offence of breaking his licence. Section 29 of the previous Act of 1867 also confirms this impression. It speaks of the breach being punishable, not of any particular person being liable to be punished, and it provides that the fine should be recovered from the person licensed notwithstanding that the default was due to the act of the servant or other person in charge. Where the legislature intends to provide for one or more persons being punished for a single offence under this Act it provides in clear terms for that being done—see sections 45, 71 and 72. For instance under section 45, the owner of a common gaming house and his assistants are made liable to be punished separately. Similarly in the Abkārī Act (Madras Act I of 1886), the holder of a licence is declared by section 64 to be punishable for such breaches of the licence as are mentioned in section 55, as well as the actual offender; if the actual offender is in his employ and he fails to prove that he has done his best to avoid any breach of his licence.

I agree with my learned brother that the convictions should be upheld in Criminal Revision Cases Nos. 654 and 656 and reversed in the other two cases and that the fines in Criminal Revision Cases Nos. 655 and 657 should be refunded.

N.R.

APPELLATE CRIMINAL.

Before Mr. Justice Ayling and Mr. Justice Coultts Trotter.

HUSSAINA BEARI, PETITIONER (ACCUSED),

v.

KING-EMPEROR, RESPONDENT.*

Indian Penal Code (XLV of 1860), Section 211—Complaint, under section 1 of the Breach of Contract Act (XIII of 1859), withdrawn before passing of any order under section 2—Whether a 'criminal proceeding' within section 211, Indian Penal Code.

A complaint under section 1 of the Breach of Contract Act (XIII of 1859) which is withdrawn before any order is made by the Magistrate under section 2

VELAYUDA
MUDALI
v.
KING-
EMPEROR
—
SPENCER, J.

1920,
January, 22.

* Criminal Revision Case No. 711 of 1919 (Criminal Revision Petition No. 603 of 1919).