

APPELLATE CRIMINAL.

Before Mr. Justice Krishnan.

JAYARAMULU NAIDU AND ANOTHER, PETITIONERS.*

1922,
August 10.*Abkārī Act (Madras Act I of 1886), sec. 55 (a)—Possession
of liquor—Licence.*

The word "possession" in section 55 (a) of the Madras Abkārī Act does not mean constructive possession but actual possession.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, and section 107, Government of India Act, praying the High Court to revise the judgment of H. E. L. D'SENA, Subdivisional Magistrate, Chingleput, in Criminal Appeal No. 33 of 1921.

The facts are set out in the judgment.

E. Vinayaka Rao, vakil for the petitioners.

The Public Prosecutor for the Crown.

JUDGMENT.

This Revision Case is filed by accused 2 and 3 only, in Calendar Case No. 152 of 1921 on the file of the Third-class Magistrate of Uttiramerur. They have been convicted under section 55, clause (a) of Act I of 1886, the Madras Abkārī Act, for being in possession of liquor without a proper licence obtained for the purpose. The first accused has not come up here at all. It is argued on behalf of accused 2 and 3 that there is no evidence on record to show that they were in possession of the liquor. The finding of the lower Court is that the liquor was found in a cattle shed which belonged to accused 2 and 3 in which the first accused was selling the liquor. When the authorities came up on the scene, the first accused seems to have locked up this shed and bolted, and the door of the shed had to be broken

* Criminal Revision Case No. 104 of 1922.

open to get access into it. The lower Court, no doubt, holds that the second and third accused should also be considered to have been in possession of the liquor, because they were the owners of the shed ; but I think this finding cannot be accepted, for in section 55 (a) the word "possession," I think, does not mean constructive possession but actual possession. It is only people who are actually in possession of contraband liquor without licence that can be punished under the section. In the circumstances of the case there is no clear evidence that accused 2 and 3 had anything to do with the liquor and the only point against them is that they were the owners of the cattle shed, which, I think is not sufficient to justify a conviction as regards them.

The conviction will therefore be set aside as regards accused 2 and 3 and the fines, if paid, will be refunded.

K.U.L.

In vs.
JAYARAMULU
Naidu.

APPELLATE CRIMINAL.

Before Mr. Justice Krishnan.

RAMASAMI CHETTY (COMPLAINANT), PETITIONER,

v.

MUTHUVELU MUDALI AND TWO OTHERS (ACCUSED),
RESPONDENTS.*

1922,
September 1.

*Towns Nuisances Act (Madras Act III of 1889), sec. 3 (12)—
Criminal Rules of Practice, r. 16 (2)—“Conservancy clauses of
Police Acts”—Bench of Magistrates—Jurisdiction—Consent.*

A complainant who invoked the jurisdiction of a Court is not prevented from questioning it in Revision. A Court cannot get jurisdiction, if it had not any in law, merely because parties invoke it.

* Criminal Revision Case No. 263 of 1922.