

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss.

PUBLIC PROSECUTOR, APPELLANT,

1927,
October 13.

v.

BYSANI RAMASUBBIAH CHETTY, ACCUSED.*

*Abkari Act (I of 1886), sec. 55 (1)—“Sale”—Meaning of—
Actual delivery—If necessary.*

For the purpose of section 55 (1) of the Abkari Act (I of 1886) a sale is complete as soon as the price is paid or agreed to be paid for ascertained goods and it is not essential that there should have been an actual delivery of the thing sold.

APPEAL under section 417 of the Code of Criminal Procedure, 1898, against the acquittal of the aforesaid accused by the Subdivisional First-class Magistrate of Chittoor in C.A. No. 14 of 1927 on his file (C.C. No. 25 of 1927 on the file of the Court of the Stationary Second-class Magistrate of Madanapalle).

Public Prosecutor for appellant.*E. Krishnamurthi* for accused.

JUDGMENT.

This is an appeal by the Government against the order of the Subdivisional First-class Magistrate of Chittoor acquitting the counter-petitioner who was convicted by the Second-class Magistrate of Madanapalle under section 55 (1) of the Abkari Act. The learned Subdivisional Magistrate found the facts as alleged by the prosecution but acquitted the counter-petitioner solely on the ground that there was no delivery of the brandy bottle to the buyer. Under section 55 (1) of the Abkari Act, I of 1886, it is an offence for any one to

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sell any liquor or any intoxicating drug in contravention of the provisions of the Act. The word "sell" is not defined; but "sale" or "selling" is defined as including any transfer otherwise than by way of gift. The contention of the Public Prosecutor is that for the purpose of a sale it is unnecessary that there should be actual handing over of the property sold. Under the Contract Act there can be a sale without actual delivery of the goods sold. I do not think that the word "sell" in section 55 of the Abkari Act is used in any sense different from that in which it is used in the Contract Act. A sale is complete as soon as the price is paid or agreed to be paid for ascertained goods. It is not necessary for a completed sale that there should be an actual delivery of the thing sold. In this case there is satisfactory evidence which is accepted by both the lower Courts that the counter-petitioner took some money through his son from P.W. 3 and brought out a half brandy bottle, and when he was actually handing it over to P.W. 3 he was arrested by P.W. 1. Taking the money and bringing the bottle out, for the purpose of handing it over to P.W. 3, constitute an offence under section 5 (1) of the Abkari Act. I therefore set aside the order of acquittal passed by the Subdivisional Magistrate, and I impose a fine of Rs. 50 on the counter-petitioner, and, in default of the payment of fine, two weeks simple imprisonment.

B.C.S.