

APPELLATE CRIMINAL.

*Before Mr. Justice Curgenvén and Mr. Justice Cornish.*1934,
September 21.IN RE CHINNAPPAYYA MUDALI (ACCUSED),
PETITIONER.**Madras Abkari Act (I of 1886), sec. 64—“Actual offender”—
Liability of licensee for acts of servant.*

To justify the conviction of a licensee under paragraph 2 of section 64 of the Madras Abkari Act (I of 1886), it is enough if the prosecution proves that the “actual offender” was employed by the licensee to perform the duties in the course of which the offence was committed. It is not necessary to prove also that the actual offender committed the offence as the agent of the licensee and with his knowledge and approval. The section is clearly designed to allow presumptions to be made in excess of those permitted by the ordinary criminal law, and the intention of the provision is to place a heavier responsibility for the act of his servant upon a licensee, as such, than lies upon an employer under the ordinary criminal law.

Venkayya, In re, (1928) 55 M.L.J. 712, dissented from.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of the Joint Magistrate of Tirupattur (North Arcot District) in Criminal Appeal No. 83 of 1933 (Calendar Case No. 417 of 1933 on the file of the Court of the Sub-Magistrate of Gudiyattam).

V. A. Nageswara Ayyar for petitioner.

Public Prosecutor (L. H. Bewes) for the Crown.

Cur. adv. vult.

The Order of the Court was delivered by
CURGENVEN J. CURGENVEN J.—The petitioner is the renter of an
arrack shop at Tirumani. It is supplied with

* Criminal Revision Case No. 149 of 1934 (Criminal Revision Petition No. 138 of 1934).

arrack from the depot at Vellore, and on the occasion which gave rise to this case a permit was issued for the transport of three gallons of arrack from depot to shop. Only one gallon reached the shop ; the other two were diverted elsewhere, it is alleged, to be made the subject of illicit sale. There is no question that the breach of the law thus committed was committed by the petitioner's servants, employed by him for transporting the arrack. He has also himself been convicted under section 56 (b) (doing or omitting to do something in breach of the conditions of his licence or permit) read with section 64 of the Madras Abkari Act, and sentenced to pay a fine of Rs. 150. At the trial an attempt was made to show that the failure to carry all the arrack to its destination was due to circumstances beyond the control of the employee, so that there was no wilful breach of the terms of the permit. This was disbelieved by the trial and the appellate Courts. The further point is now taken that the conviction is not justified by the terms of the Abkari Act.

The correctness of the petitioner's conviction turns upon the construction to be given to the second paragraph of section 64. It runs as follows :—

“The holder of a licence or permit under this Act shall be punishable, as well as the actual offender, for any offence committed by any person in his employ and acting on his behalf under section 55 or section 56 or section 57 or section 58 as if he had himself committed the same, unless he shall establish that all due and reasonable precautions were exercised by him to prevent the commission of such offence.”

The argument addressed to us is that the prosecution must prove not only that the “actual offender” was employed by the licensee to perform

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the duties in the course of which the offence was committed but further that, in committing the act or acts constituting the offence, he was "acting on his behalf", i.e., he was not only acting on his behalf in the discharge of his duties but that he committed the offence as the agent of the licensee and with his knowledge and approval ; as, e.g., where a man arranges for his servants to commit an act of criminal trespass. The objection to this construction is that the section is clearly designed to allow presumptions to be made in excess of those permitted by the ordinary criminal law. A perusal of paragraph 1 of the section will show that it throws the burden of disproving guilt on a person unable to account satisfactorily for the possession of apparatus or materials. Paragraph 2 makes the licensee constructively guilty of acts committed by his employees, subject to a certain reservation. The nature of that reservation appears to us to place the meaning beyond doubt. The licensee has to establish "that all due and reasonable precautions were exercised by him to prevent the commission of such offence". If a licensee is to be exonerated from criminal liability only if he takes all due and reasonable precautions to prevent the commission of such offence, he is clearly not to be exonerated merely because he may not have been consciously a party to the offence. If this were so, the obligation cast upon him to take precautions need never come into question because an acquittal could be secured, as in the circumstances of the present case, without proof that such precautions had been taken. The intention of the provision is, we think, to place a heavier responsibility for the act of his servant

upon a licensee, as such, than lies upon an employer under the ordinary criminal law.

There is a judgment of DEVADOSS J. in *Venkayya, In re*(1) which embodies a different view. In a similar case the learned Judge acquitted a licensee

“for he could not have presumed or have known that they (his servants) were going to carry the toddy to No. 3 shop instead of No. 1 shop.”

The tests applied were whether the act was done in the course of business, and whether therefore the licensee could be presumed to have given authority. It is difficult to understand how an offence can be said to have been committed in the course of business, unless the meaning merely is that it was committed instead of pursuing the ordinary course of business. If it has to be found that the licensee authorized the commission of the offence, no special rule of responsibility need have been enacted. The judgment contains no discussion of the terms of section 64, and we must respectfully express our dissent from it.

We consider that the petitioner has been rightly convicted. We do not think that the fine imposed is excessive. The criminal revision petition is dismissed.

K.W.R.

(1) (1928) 55 M.L.J. 712.
