

APPELLATE CRIMINAL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Norman.

EMPEROR *v.* DAGADU SHETIBA (ACCUSED).*

1937
August 12

Bombay Abkari Act (Bom. V of 1878), section 43 (1) (a)—To transport, meaning of—Place of starting—Place of destination—Interpretation.

When the Bombay Abkari Act, 1878, deals with about transport from one place to another, it means transport from the starting point to the ultimate destination. It is a question of fact for the Court to determine what the destination may be. Merely passing through a place in the course of journey does not amount to transporting to that place.

The expression "to transport", defined in section 3 (10) of the Bombay Abkari Act 1878, commented on.

CRIMINAL APPEAL by Government of Bombay against an order of acquittal made by M. A. F. Coelho, Presidency Magistrate, 5th Court, Dadar.

Prosecution under section 43 (1) (a) of the Bombay Abkari Act, 1878.

Dagadu Shetiba (accused) lived at Jogeshwari in the Bombay Suburban District. On February 23, 1937, when he started to go to the Khed Taluka in the Poona District to meet his ailing father, he had with him an open bottle containing five drams of country liquor. He took a train at Jogeshwari on the B. B. & C. I. Railway and had to change at Dadar on to the G. I. P. Railway. He was stopped at Bombay by an excise constable and was searched when the bottle in question was found on him.

Dagadu was arrested and was put upon trial, the charge being that on February 23, 1937, he transported five drams of country liquor from Jogeshwari to Dadar, B. B. & C. I. Railway station.

The accused stated that he was going to Chimbli in the Khed Taluka to meet his father, and that he was going *via*

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Dadar. He admitted having on his person a bottle of country liquor containing five drams.

The learned Magistrate, being of opinion that no offence had been committed, made an order acquitting the accused.

Government of Bombay appealed.

Diwan Bahadur P. B. Shingne, Government Pleader, for the Government of Bombay.

D. V. Dharap, (appointed) for the accused.

BEAUMONT C. J. This is an appeal by the Government of Bombay against an order made by the Presidency Magistrate, 5th Court, acquitting the accused, who was charged with an offence under section 43 (1) (a) of the Bombay Abkari Act (Bom. V of 1878). The learned Magistrate has found as a fact, and I see no reason to differ from his finding, that the accused was going from Jogeshwari, which, I understand, is in the neighbourhood of Andheri, to Khed Taluka in Poona in order to visit his father, who was ill. In order to get to that place he had to change stations at Bombay. He had to change from the B. B. & C. I. Railway to the G. I. P. Railway, and he changed stations at Dadar. He had with him an open bottle of country liquor containing five drams, and he was arrested in Bombay, and charged with an offence under the Bombay Abkari Act. I must say that I think it unfortunate that excise constables do not seem to have vested in them any sort of discretion. Anything more calculated to irritate the public without producing any corresponding advantage to Government than making a charge against a man in respect of a half-pint bottle of wine which he proposes to consume on his journey I can hardly imagine. However, the Magistrate held that no offence was committed, and Government have appealed, and they contend that there is a serious question of principle involved. Now section 43 (1) (a), under which the accused was charged, makes it an offence, amongst other things, to transport any excisable article, and section 10 expressly prohibits the

transportation of an excisable article. "Transport" is defined in the Act as meaning to move from one place to another place within the presidency. The definition is so wide as to be really useless for the purpose of construing the Act. Strictly speaking, a butler who moves an excisable article from the cellar to the dining room may be said to move it from one place to another, but it can hardly be suggested that he is committing an offence under the Act; nor I think can it be suggested that anybody who takes an excisable article from his bungalow to his office for consumption at tiffin is transporting it from one place to another, and therefore committing an offence under the Act. One must, I think, give some sort of common sense meaning to the very wide language used. It is, of course, perfectly true that removal of this bottle of wine from Jogeshwari to Pōona was transportation from one place to another. Nobody would dispute that. But if that is the only act of transport, it is admitted by the Government Pleader that the amount of liquor, namely, five drams, which the accused had with him, was within the limits allowed by Government Notification made under section 12 of the Act, because the rate of duty at Jogeshwari and Poona is the same. But the rate of duty in Bombay is higher, and if the transportation was from Jogeshwari to Bombay, then the amount of five drams is in excess of the amount allowed by Government Notification. So that the short point on this appeal is whether you can say that transportation from one place to another involves transportation to every place between those two places. Strange results would follow if that be the construction of the Act. It would mean that if a man is taking a bottle of excisable liquor by a motor car from one place to another which is on the same duty level, and if he happens to pass through a place where the duty is higher, he commits an offence under the Act, whereas if he avoids that place he does not. In my view that cannot be the meaning of the Act. I think that when the Act talks about

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transport from one place to another it means transport from the starting point to the ultimate destination. It is a question of fact for the Court to determine what the destination may be. If a man comes to a place and stays there for an appreciable time—and what amounts to an appreciable time would have to be considered in relation to the purposes of the Act—the Court might hold that that place was the destination although it appeared that the journey was to be resumed subsequently. But merely passing through a place in the course of a journey does not, in my judgment, amount to transporting to that place. In the present case, on the finding of the Magistrate, the accused was going to Poona, and was merely passing through Bombay. That being so, I think the Magistrate was right in acquitting the accused, and the appeal is dismissed.

NORMAN J. I agree. What the Court has to interpret is the proviso to G. R. No. C-1277 of 1922, which runs as follows :—

“Provided however that in the case of transport from a lower to a higher still-head duty area within the Bombay Presidency the maximum limit shall be one-quarter of a pint.”

“Transport” as defined by the Bombay Abkari Act means to move liquor from one place to another. For the reasons given by my Lord the Chief Justice, I agree that “place” in this definition means the place from which the journey starts and the place to which the liquor is ultimately taken, always supposing, of course, that the journey is unbroken. It cannot mean every place on the route. It follows, therefore, that in the present case there has been no transport from a lower to a higher still-head duty area, since the ultimate destination of the liquor was a place where the still-head duty is the same. I, therefore, agree that the appeal should be dismissed.

Appeal dismissed.

Y. V. D.