Supreme Court of India
State Of Maharashtra vs Laxman Jairam on 16 February, 1962
Equivalent citations: 1962 AIR 1204, 1962 SCR Supl. (3) 230
Author: K L.
Bench: Kapur, J.L.

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
LAXMAN JAIRAM

DATE OF JUDGMENT:
16/02/1962

BENCH:
KAPUR, J.L.
BENCH:
KAPUR, J.L.
GUPTA, K.C. DAS
DAYAL, RAGHUBAR

CITATION:
1962 AIR 1204 1962 SCR Supl. (3) 230
CITATOR INFO :
RF 1969 SC 381 (5)
R 1973 SC 246 (8)

ACT:
Prohibition-Consumption of liquor-Prosecution for Accused's Statement-Consumption of medicinal preparations with high alcoholic content-Burden of proof-Discharge of Bambay Prohibition Act,1949-(Bom. 25 of 1949), as amended by Bombay Act 12 of 1959, ss. 66 (1) (b), 66 (2) Code of Criminal Procedure, 1898 (Act 5 of 1898), s. 342.

HEADNOTE:
Respondent was arrested by a police constable on the ground that he -was smelling of liquor. The doctor who examined him gave evidence at the trial that though the respondent had consumed alcoholic substance he was not under the influence of liquor. In cross-examination the doctor stated that consumption of Neem would produce a blood concentration of 0. 146%. The respondent in examination under s. 342 of the Code of Criminal Procedure stated that he had not consumed prohibited alcohol but that he had consumed six ounces of Neem. He was acquitted by the Magistrate. The appellant appealed to the High Court. The main ground of

appeal was that the mere statement of the respondent that he had consumed 6 ozs. of Neem was not sufficient to rebut the presumption under sub-s. (2) of s. 66 of the Bombay prohibition Act, 1949, as amended by the Bombay Prohibition (Extension and amendment) Act, 1959. The High Court dismissed the appeal in limine. Thereupon the appellant appealed to the Supreme Court by way of Special Leave on the same ground as was raised before the High Court.
Held, that the statement of the accused recorded under s. 342 of the Code of Criminal Procedure can be taken into consideration in judging the innocence or guilt of a person. If the explanation given by the accused in his statement is acceptable to the court it must be held that the accused has discharged the burden under s. 66 (2) of the Bombay Prohibition Act. 1949.
O. S. D. Swamy v. State, (1960) 1 S. C. R. 46 1, distinguished.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 58 of 1961.

Appeal by special leave from the judgment and order dated October 17, 1960, of the Bombay s High Court in Criminal Appeal No. 1235 of 1960.

R. H. Dhebar, for the appellant.

The respondent did not appear.

1962. February 16. The Judgment of the Court was delivered by Kapur J.-This appeal by Special Leave against the decision of the High Court of Bombay dismissing the State's appeal against the acquittal of the respondent arises out of- proceedings under s. 66(1)(b) of the Bombay Prohibition Act, 1949 (Act25 of 1949), as amended, hereinafter called the Act'.

The respondent was arrested by Police Constable Laxman Sabaji on August 8, 1959, at 8-15 p.m. on the ground that he was smelling of liquor and bad therefore contravened the provisions of the Act. The respondent was taken to the hospital where he was examined by Dr. Dadlani Prabhu Rochiram P. W., who has deposed that the respondent was Smelling of liquor but his speech, behaviour, gait, coordination and memory were normal. From this he concluded that the respondent had consumed some alcoholic substance but was not under the influence of liquor. In cross- examination he stated that Tincture Neem would produce blood concentration of 0.146% M/V of ethyl alcohol. The respondent in his examination under s. 342 stated: Question: "What do you wish to say with reference to the evidence given and recorded against you? Answer :I have not consumed prohibited alcohol. I had taken 6 ounces of Neem as I am used to it".

On this evidence the Presidency Magistrate Mr. Lokur acquitted the respondent. He observed:-

> "Neem is a medicinal preparation containing about 40% of alcohol and is readily available in the market. I do not see why I should not accept the explanation given by the accused that he had taken Neem in order to satiate his craving for alcohol. It has been held by Bavdekar and Chainani, JJ., in Criminal Appeal No. 1611 of 1954 dated 25-2-1954 that taking an excess dose of medicinal preparation does not amount to consumption of prohibited liquor. In Criminal Appeal No. 1562 of 1959 State v. Domnic Robert D'Sliva where a similar defence was taken up it was held that consumption of 6 ounces of essence of Neem did not constitute an offence. Following these judgments I hold that the accused has not committed any offence. I therefore acquit the accused".

Against this order an appeal was taken to the High Court and one of the grounds taken in the memorandum of Appeal was that the mere statement of the respondent that he had consumed 8 ounces of Tincture of Neem was not sufficient to rebut the presumption arising out of sub-s. (2) of s. 66 of the Act. But the High Court dismissed the appeal in limine. It is against that order that the State has come by Special Leave to this Court.

The main question raised on behalf of the State is that by the introduction of s. 66(2) in the Act as a result of the Bombay Prohibition (Extension and amendment) Act, 1959, (Act 12 of 1959), the onus is on the accused person and that that onus had not been discharged in the present case. Section 66(2) is as follows :-

> S. 66(2) ",Subject to the provisions of subsection (3) wherein in any trial of an offence under clause (b) of sub-section(1) for the consump- tion of an intoxicant it is alleged that the accused person consumed liquor, and it is proved that the concentration of alcohol in the blood of the accused person is not less than 0.05 per cent. weight in volume, then the burden of proving that the liquor consumed was a medicinal or toilet preparation, or an antiseptic preparation or solution, or a flavouring extract, essence or syrup, containing alcohol, the consumption of which is not in contravention of the Act or any rules, regulation or orders made thereunder, shall be upon the accused person,and the Court shall in the absence of such proof presume the contrary".

The argument was put in this way that if the prosecution proves that the concentration of alcohol in the blood of an accused person is more than 0.05% then under s. 66(2) of the Act the burden was on him to show that the liquor which he had consumed was a medicinal or toilet preparation the consumption of which is not in contravention of the Act or any Rules made thereunder. It was further submitted that in order to discharge the onus mere statement of the accused is not sufficient. Our attention was drawn to the scheme and some of the provisions of the Act.

The prosecution, in the present case, has proved that the respondent's breath was smelling of liquor and that on examination of his blood it was found to contain 0.146% bat the respondent gave an explanation showing that he had taken 6 ounces of Tincture of Neem and Dr. Dadlani Prabhu Rochiram has deposed that the consumption of 6 to 8 ounces of that substance will produce that

amount of concentration of blood. This was accepted by the learned Presidency Magistrate and by the

-High Court. Therefore on this finding it must be held that the explanation given by the respondent of the cause of his smelling of liquor and of the blood concentration was accepted by the High Court as being sufficient to discharge the onus placed on him. But Mr. Dhebar for the State submits that mere statement of an accused person is not sufficient for the discharge of such onus and relies on a judgment of this Court in C. S.D. swamy v. The State (1), where Sinha, J. (as he then was), observed:-

> "In this case, no acceptable evidence, beyond the bare statements of the accused, has been adduced to show that the contrary of what has been proved by the prosecution, has been established, because the requirement of the section is that the accused person shall be presumed to be guilty of criminal misconduct in the discharge -of his official duties " unless the contrary is proved". The words of the statute are peremptory, and the burden must lie all the time on the accused to prove the contrary".

All that the learned Judge there meant to Ray was that the evidence of the statement of the accused in the circumstances of that case was not sufficient to discharge the onus but that does not mean that in no case can the statement of an accused person be taken to be sufficient for the purpose of discharging the onus if a statute places the onus on him. Under s. 342 of the Criminal Procedure Code the Court has the power to examine the accused so as to en- able him to explain any circumstance appearing in evidence against him. Under sub-s. 3) of that section the answers given by an accused person may be taken into consideration in such enquiry or trial. The object of examination under s. 342 therefore is to give the, accused an opportunity to (1) [1960] 1 S.C.R. 461, 471.

explain the case made against him and that statement can be taken into consideration in judging the innocence or guilt of the person so accused. Therefore if the courts below have accepted this explanation it must be held that the respondent has discharged the onus which was placed on him by s. 65(2) of the Act.

The appeal is therefore dismissed.

Appeal dismissed.