
(1977) 09 BOM CK 0016
In the Bombay High Court

Maruti Sakharam Aher

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 01-09-1977

Acts Referred:

Citation : (1978) CriLJ 67

Hon'ble Judges : Apte, J

Bench : Single Bench

Judgement

Apte, J.—The only question that arises on this petition filed by the original accused,- who has been convicted for, an offence u/s 85 (1) of the Bombay Prohibition Act, is whether open courtyard of police lines is a public place or a place to which public have of are permitted to have access.

2. The facts on which this question arises are as follows:

The accused is a police constable residing iii police lines in the City of Nasik. On the night of Sept. 1, 1973 at about 11-30 p.m., information was received by Sub-Inspector of Police, Kadambande, of Trimbak Police Chowky at Nasik from some boys, one of whom was Shriram Katkade, that the accused was behaving in a disorderly manner under the influence of drink in the open courtyard outside the police quarters in which the accused himself resided.

3. On receiving this information, the Sub-Inspector accompanied by some other police officers went to the spot and they took the accused in custody and it is stated that he was found behaving in a disorderly manner as he was abusing those who were collected there.

4. They, therefore, by force took him to the Civil Hospital where he was medically examined and a sample of his blood was taken. The same was sent to the Chemical Analyser who is said to have found that it contained 0.69% of ethyl alcohol.

5. The Medical Officer, who examined him, also certified that the accused had

consumed alcohol and was under its influence. He was, therefore, prosecuted u/s 85(1) of the Bombay Prohibition Act.

6. Under that section whoever be-haves in a disorderly manner under the influence of drink in any street or thoroughfare or public place or any place to which the public have or are permitted to have access Is punishable on conviction with the imprisonment as stated therein.

7. Both the Courts below have found that the accused was drunk and he be-have in a disorderly manner, and that being a finding of fact based on evidence cannot be said to be incorrect.

8. The question, however, is whether the accused was found in a public place or a place to which the public have or are permitted to have access, because it is only when a person in a drunken condition appears in a public place that he can be punished u/s 85 of the said Act.

9. According to the prosecution allegation itself, the accused appeared only in the courtyard of the police lines. The accused was residing in one of the tenements in those quarters. The question, therefore, is whether the courtyard of1 such police lines or police quarters can be said to be a public place or a place to which public have or are permitted to have access.

10. Mr. Deo, the Public Prosecutor appearing for the State very vehemently argued that any member of public can go to such a place as it is open. However, it must be remembered that it is an open courtyard attached to the private quarters of police constables or police officers. It is only the officers or constables who are residing in those quarters can have access to the courtyard attached to such quarters. Any member of the public cannot as of right go to the courtyard. The inmates of the police quarters can very well exclude any member of the public from this place. In my view, therefore, the accused cannot be held guilty of the offence u/s 85(1) on the allegation made by the prosecution itself. On this narrow ground, therefore, the accused is entitled to be acquitted,

11. Mr. Deo also argued that et any rate the Civil Hospital was a public place and the evidence shows that after the accused was taken to the Civil Hospital, he behaved in a disorderly manner as he indulged in hurling abuses on police officers and other persons. But here again, it must be emphasized that the accused had not voluntarily gone to the Civil Hospital but on the showing of the prosecution itself, he was dragged to that place by the police for examination by the Medical Officer. Had he gone there voluntarily perhaps there was some force in this argument. But, according to the prosecution itself, that is not the case. After the accused was found in the courtyard of the police quarters, he was taken in custody and was forcibly taken to the Civil Hospital.

12. In the result, the rule is made absolute, the order of conviction and sentence is set aside and the accused is acquitted. Fine if already recovered to be refunded to the accused. Bail-bond stands cancelled.