
(1927) 10 MAD CK 0075
In the Madras High Court

The Public Prosecutor

APPELLANT

Vs

Bysani Ramasubbayya Chetty

RESPONDENT

Date of Decision : 13-10-1927

Acts Referred:

Citation : (1928) ILR (Mad) 335 : (1928) 27 LW 84 : (1928) 54 MLJ 712

Hon'ble Judges : Devadoss, J

Bench : Division Bench

Judgement

Devadoss, J.—This is an appeal by the Government against the order of the Sub-divisional First Class Magistrate of Chittoor, acquitting the counter-petitioner who was convicted by the Second Class Magistrate of Madanapaltee u/s 55 (1) of the Abkari Act. The learned Sub-divisional 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. u/s 55 (1) of the Abkari Act, I of 1886, it is an offence for any one to 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 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 u/s 55 (1) of the Abkari Act. I therefore set aside the order of acquittal passed by the Sub-divisional 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.