AIR 1928 Bom 141 : (1928) 30 BOMLR 378 : (1928) ILR (Bom) 277 : 108 Ind. Cas. 512

Bombay High Court

Case No: Criminal Reference No. 100 of 1927

Emperor	APPELLANT
Vs	
Pandu Avachit Bhil	RESPONDENT

Date of Decision: Dec. 21, 1927

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 35

Citation: AIR 1928 Bom 141 : (1928) 30 BOMLR 378 : (1928) ILR (Bom) 277 : 108 Ind. Cas. 512

Hon'ble Judges: Mirza, J; Fawcett, J

Bench: Division Bench

Judgement

Fawcett, J.

In this ease the accused was convicted of two offences : (i) of having in his possession one and a half drams, of illicit liquorï¿½an offence under Clause (a) of Sub-section (1) of Section 43 of the Bombay Abkari Act of 1878, and (2) of having in his possession apparatus for manufacturing illicit liquorï¿½an offence under Clause (h) of the same section, He was awarded two distinct sentences for each offence. The District Magistrate has referred the case to us, being of opinion that the two sentences are illegal, as the second offence was included in the former, and under the Explanation to Section 35 of the Criminal Procedure Code they were not distinct. It should be noted that this particular Explanation has been repealed by Act XVIII of 1923, and, therefore, does not affect the case. But the District Magistrate has also given a reference to some rulings which are mentioned at pp. 36 and 37 of the Bombay Excise Manual, Vol. I. These presumably are the cases mentioned in paragraphs 7, 8 and 9 on those pages, and all these were cases where the accused was convicted of the offence of manufacturing liquor and being in possession of apparatus for manufacturing liquor. In the third case, the accused was also convicted of being in possession of some Mhowra flowers, as well as having an apparatus for manufacturing country liquor from those flowers; and the view which was taken in these rulings that the offence of manufacturing illicit liquor necessarily covered

the offence of possessing the apparatus for manufacturing the liquor, because the manufacture cannot be made without such apparatus, was one that was supported by the Explanation to Section 35 of the Criminal Procedure Code. That Explanation has, however, now been repealed, and it is open to question whether the same view can now be supported. But, however that may be, there is, in my opinion, no proper basis for saying that the offence of possessing illicit liquor is necessarily covered by the offence of possessing the apparatus for manufacturing such liquor. The two offences are, in my opinion, quite distinct. Similarly, it was held in Queen-Empress v. Shivdia (1890) Cr. C. 523, that the possession of materials for manufacturing liquor and the act of manufacturing liquor are quite distinct offences, respectively punishable under different clauses of Section 43 of the Bombay Abkari Act. This is a ruling which conflicts with those that are mentioned in the Excise Manual and which, I have already said, are open to question under the present law. The accused has presumably already suffered the imprisonment to which he was sentenced under each offence. We see no reason to interfere in revision and direct the papers to be returned to the District Magistrate.