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November, 28.

A. S. KRISHNA

v.

STATE OF MADRAS.

(with connected appeals)

(S. R. DAS C.J., BHAGWATI, VENKATARAMA AYYAR, B. P. SINHA and S. K. DAS, JJ.)

Madras Prohibition Act, 1937 (Mad. X of 1937), ss. 4(1), 4(2), 28, 29, 30, 31, 32—Constitutional validity—Legislative competency—Pith and substance of the legislation—The Government of India Act, 1935 (26 Geo. 5 & 1 Edw. 8 Ch. 2), s. 107(1), Sch. 7 List II, Entry 31—Constitution of India, Art. 14.

The appellants were charged before the Presidency Magistrate for offences under the Madras Prohibition Act, 1937 and when the cases were taken up for trial they raised the contentions that ss. 4(2) and 28 to 32 of the Act are void under s. 107(1) of the Government of India Act, 1935, because they are repugnant to the provisions of the Indian Evidence Act, 1872, and the Code of Criminal Procedure, 1898, and also because they are repugnant to Art. 14 of the Constitution of India. On their application, the Magistrate referred the questions for the opinion of the High Court under s. 432 of the Code of Criminal Procedure. The High Court having answered the questions against the appellants they preferred the present appeal under Art. 136.

Held, that the Madras Prohibition Act, 1937, is both in form and in substance a law relating to intoxicating liquors and that the presumptions in s. 4(2) and the provisions relating to search, seizure and arrest in ss. 28 to 32 of the Act have no operation apart from offences created by the Act and are wholly ancillary to the exercise of the legislative power under Entry 31 in List II, Sch. 7 of the Government of India Act, 1935. Accordingly the Act is in its entirety a law within the exclusive competence of the Provincial Legislature and the question of repugnancy under s. 107(1) of the Government of India Act, 1935, does not arise.

When a law is impugned on the ground that it is *ultra vires* the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that, one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. If on such examination it is found that the legislation is in substance one on a matter assigned to the legislature, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence. It would be quite an erroneous approach to the question to view such a statute not as an organic whole, but as a mere collection of sections, then disintegrate it into parts, examine under what heads of legislation those parts

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would severally fall, and by that process determine what portions thereof are *intra vires*, and what are not.

Subrahmanyan Chettiar v. *Muthuswami Goundan*, (1940) F.C.R. 188, *Prafulla Kumar Mukherjee* v. *The Bank of Commerce Ltd.* (1940) L. R. 74 I.A. 23 and *Lakhi Narayan Das* v. *The Province of Bihar* (1949) F.C.R. 693, relied on.

Held further, that the presumptions in s. 4(2) of the Act do not offend the requirements as to equality before law or the equal protection of laws under Art. 14, as they have to be raised against all persons against whom the facts mentioned therein are established. Even assuming that the law in America that a presumption of guilt would offend the requirement of the equal protection of laws unless there is a rational connection between the act proved and the ultimate fact presumed, could have application to the Indian Constitution, on a proper reading of the sections there is a reasonable relation between the presumption raised in s. 4(2) and the offences under s. 4(1).

William N. McFarland v. *American Sugar Refining Company*, 241 U.S. 79; 60 L. Ed. 899, *Albert J. Adams* v. *People of the State of New York*, 192 U.S. 585; 48 L. Ed. 575 and *Robert Hawes* v. *State of Georgia*, 258 U.S. 1; 66 L. Ed. 431, referred to.

CRIMINAL APPELLATE JURISDICTION: Criminal Appeals Nos. 20 to 23 of 1955.

Appeals by special leave from the judgment and order dated May 7, 1954, of the Madras High Court in Criminal Revision Cases Nos. 57 to 60 of 1954 and Case Referred Nos. 2 to 5 of 1954.

N. C. Chatterji, S. Venkatakrishnan and *S. Subramanian*, for the appellants.

V. K. T. Chari, Advocate-General, Madras, Ganapathy Iyer and *T. M. Sen*, for the respondent.

1956. November 28. The Judgment of the Court was delivered by

VENKATARAMA AYYAR J.—The point for decision in these appeals is whether ss. 4(2), 28, 29, 30, 31 and 32 of the Madras Prohibition Act No. X of 1937, hereinafter referred to as the Act, are unconstitutional and void.

It will be convenient first to set out the impugned statutory provisions. Section 4, omitting what is not material, runs as follows;

4(1) "Whoever

(a) imports, exports, transports or possesses liquor or any intoxicating drug ; or

.....

(g) uses, keeps or has in his possession any materials, still, utensil, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug ; or

.....

(j) consumes or buys liquor or any intoxicating drug ; or

(k) allows any of the acts aforesaid upon premises in his immediate possession,

shall be punished—

.....

Provided that nothing contained in this sub-section shall apply to any act done under, and in accordance with, the provisions of this Act or the terms of any rule, notification, order, licence or permit issued thereunder.

(2) It shall be presumed until the contrary is shown—

(a) that a person accused of any offence under clauses (a) to (j) of sub-section (1) has committed such offence in respect of any liquor or intoxicating drug or any still, utensil, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug, or any such materials as are ordinarily used in the tapping of toddy or the manufacture of liquor or any intoxicating drug, for the possession of which he is unable to account satisfactorily ; and

(b) that a person accused of any offence under clause (k) of sub-section (1) has committed such offence if an offence is proved to have been committed in premises in his immediate possession in respect of any liquor or intoxicating drug or any still, utensil, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor or any intoxicating drug, or any such materials as are ordinarily used in the tapping of toddy or the manufacture of liquor or any intoxicating drug."

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Section 28 provides that if any Collector, Prohibition Officer or Magistrate has reason to believe that an offence under s. 4(1) has been committed, he may issue a warrant for search. Section 29 confers on certain officers power to search and seize articles even without a warrant, under certain circumstances. Section 30 provides for certain classes of officers entering any place by day or night for inspection of stills, implements, liquor and the like. Section 31 authorises the officers empowered to make entry under ss. 28, 29 or 30, to break open any door or window and remove obstacles, if otherwise they could not make entry. Section 32 confers authority on a Prohibition Officer or any officer of the Police or Land Revenue Departments to arrest without warrant any person found committing any offence under s. 4(1).

Now, the facts are that on November 18, 1953, the Prohibition Officer, Madras City, and the Deputy Commissioner of Police made a search of premises No. 28, Thanikachala Chetty Street, Thyagarayanagar, Madras, and seized several bottles of foreign liquor and glasses containing whisky and soda. The appellant, Lakshmanan Chettiar, was residing at the premises, and the other three appellants, A. S. Krishna, R. Venkataraman and V. S. Krishnaswamy, were found drinking from the glass tumblers. All the four were immediately put under arrest and in due course charge-sheets were laid against them for offences under the Act. The three appellants other than Lakshmanan Chettiar were charged under ss. 4(1) (a) and 4(1) (j) for possession and consumption of liquor, and Lakshmanan Chettiar was charged under s. 4(1) (k) for allowing the above acts in premises in his immediate possession, and under s. 12 for abetment of the offences. He was also charged under s. 4(1) (a) on the allegation that though he was a permit-holder, he was in possession of more units than were allowed under the permit, and that by reason of the proviso to that section, he had committed an offence under s. 4(1) (a). Immediately after service of summons, the appellants filed an application under s. 432 of the Criminal Procedure Code, wherein they contended that ss. 4(2) and 28 to 32 of the Act were

repugnant to the provisions of the Constitution, and were therefore void, and prayed that the above question might be referred for the decision of the High Court. The Third Presidency Magistrate, before whom the proceedings were pending, allowed the application, and referred to the High Court as many as seven questions on the constitutionality of various sections of the Act. This reference was heard by Rajamannar, C. J., and Umamaheswaram, J., who held, disagreeing with the appellants, that ss. 4(2) and 28 to 32 were valid, and answered the reference against them. Against this judgment, the appellants have preferred the present appeals under Art. 136 of the Constitution.

Two contentions have been urged in support of the appeals: (1) Section 4(2) and ss. 28 to 32 of the Act are void under s. 107 of the Government of India Act, 1935, which was the Constitution Act in force when the Act in question was passed, because they are repugnant to the provisions of existing Indian laws with respect to the same matter, to wit, Indian Evidence Act I of 1872 and Criminal Procedure Code Act No. V of 1898, and (2) the impugned sections are repugnant to Art. 14 of the Constitution, and have therefore become void under Art. 13(1).

(1) Taking the first contention, the point for decision is whether the impugned provisions are hit by s. 107 of the Government of India Act, 1935. Subsection (1) of s. 107, which is the relevant provision, runs as follows:

"If any provision of a Provincial law is repugnant to any provision of a Federal law which the Federal legislature is competent to enact or to any provision of an existing Indian law with respect to one of the matters enumerated in the Concurrent Legislative List, then, subject to the provisions of this section, the Federal law, whether passed before or after the Provincial law, or, as the case may be, the existing Indian law, shall prevail and the Provincial law shall, to the extent of the repugnancy, be void."

For this section to apply, two conditions must be fulfilled: (1) The provisions of the Provincial law and those of the Central legislation must both be in respect

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of a matter which is enumerated in the Concurrent List, and (2) they must be repugnant to each other. It is only when both these requirements are satisfied that the provincial law will, to the extent of the repugnancy, become void. The first question, therefore, that has to be decided is, is the subject-matter of the impugned legislation one that falls within the Provincial List, in which case s. 107 would be inapplicable, or is it one which falls within the Concurrent List, in which case the further question, whether it is repugnant to the Central legislation will have to be decided ?

The Entries in the Lists which are material for the present discussion are the following :

List II—Provincial Legislative List.

2. Jurisdiction and powers of all courts except the Federal Court, with respect to any of the matters in this list ; procedure in Rent and Revenue Courts.

31. Intoxicating liquors and narcotic drugs, that is to say, the production, manufacture, possession, transport, purchase and sale of intoxicating liquors, opium and other narcotic drugs, but subject, as respects opium, to the provisions of List I and, as respects poisons and dangerous drugs, to the provisions of List III.

37. Offences against laws with respect of any of the matters in this list.

List III—Concurrent Legislative List.

2. Criminal Procedure, including all matters included in the Code of Criminal Procedure at the date of the passing of this Act.

5. Evidence and oaths ; recognition of laws, public acts and records and judicial proceedings.

Now, it is not contested that the Madras Prohibition Act, as a whole, is a law in respect of intoxicating liquors, falling within Entry 31 of the Provincial list. The declared object of the enactment as stated in the preamble to it is "to bring about the prohibition.... of the production, manufacture, possession, export, import, transport, puchase, sale and consumption of

intoxicating liquors.....". And this is carried out in s. 4(1), which enacts prohibition in respect of the above matters, and imposes penalties for breach of the same. The other provisions of the Act may broadly be divided into those which are intended to effectuate s. 4(1) and those which regulate the grant of licences and permits. The legislation is thus on a topic which is reserved to the Provinces and would therefore fall outside s. 107(1) of the Constitution Act.

The argument of Mr. N. C. Chatterjee for the appellant is that though the Act is within the competence of the Provincial Legislature in so far as it prohibits possession, sale, consumption, etc., of liquor under s. 4(1), the matters dealt with under s. 4(2) and ss. 28 to 32 fall not within Entry 31 of List II but within Entries 5 and 2 respectively of List III, and to that extent, the legislation is on matters enumerated in the Concurrent List. He contends that s. 4(2) enacting as it does a presumption to be drawn by the court on certain facts being established, deals with what is purely a matter of evidence, and it is therefore not a law on intoxicating liquors but evidence. Likewise, he argues, the provisions in ss. 28 to 32 deal with matters pertaining to Criminal Procedure, such as warrants, seizure and arrest, and have no connection with intoxicating liquors. It is accordingly contended that ss. 4(2) and 28 to 32 are legislation under Entries 5 and 2 of List III, and that their validity must be tested under s. 107(1).

The appellants are right in their contention that s. 4(2) of the Act enacts a rule of evidence but does it follow from this that it is a law on evidence, such as is contemplated by Entry 5 in the Concurrent List? So also ss. 28 to 32 undoubtedly deal with matters of procedure in relation to crimes, but are they for that reason to be regarded as legislation on Criminal Procedure Code within Entry 2 of List III ? The basic assumption on which the argument of the appellants rests is that the heads of legislation set out in the several Lists are so precisely drawn as to be mutually exclusive. But then, it must be remembered that we are construing a federal Constitution. It is of the

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essence of such a Constitution that there should be a distribution of the legislative powers of the Federation between the Central and the Provinces. The scheme of distribution has varied with different Constitutions, but even when the Constitution enumerates elaborately the topics on which the Centre and the States could legislate, some overlapping of the fields of legislation is inevitable. The British North America Act, 1867, which established a federal Constitution for Canada, enumerated in ss. 91 and 92 the topics on which the Dominion and the Provinces could respectively legislate. Notwithstanding that the lists were framed so as to be fairly full and comprehensive, it was not long before it was found that the topics enumerated in the two sections overlapped, and the Privy Council had time and again to pass on the constitutionality of laws made by the Dominion and Provincial legislatures. It was in this situation that the Privy Council evolved the doctrine, that for deciding whether an impugned legislation was *intra vires,* regard must be had to its pith and substance. That is to say, if a statute is found in substance to relate to a topic within the competence of the legislature, it should be held to be *intra vires,* even though it might incidentally trench on topics not within its legislative competence. The extent of the encroachment on matters beyond its competence may be an element in determining whether the legislation is colourable, that is, whether in the guise of making a law on a matter within its competence, the legislature is, in truth, making a law on a subject beyond its competence. But where that is not the position, then the fact of encroachment does not affect the *vires* of the law even as regards the area of encroachment. Vide *Citizens Insurance Company of Canada* v. *William Parsons*(1), *The Attorney-General of Ontario* v. *The Attorney-General for the Dominion of Canada*(2), *The Attorney-General of Ontario* v. *The Attorney-General for the Dominion* (3), *Union Colliery Company of British Columbia* v. *Bryden*(4), *Attorney-General for Canada* v. *Attorney-General for*

(1) [1881] 7 A.C.96.
(2) [1894] A.C. 189.
(3) [1896] A.C. 348.
(4) [1899] A.C. 580.

Ontario (1), *Attorney-General for Alberta* v. *Attorney-General for Canada* (2), and *Board of Trustees of Letherbridge Northern Irrigation District* v. *Independent Order of Foresters*(3).

The principles laid down in the above decisions have been applied in deciding questions as to the *vires* of statutes passed by the Indian legislatures under the Government of India Act, 1935. In *Subrahmanyan Chettiar* v. *Muttuswami Goundan* (4), the question was as to whether the Madras Agriculturists Relief Act IV of 1938, which was within the exclusive competence of the Provincial Legislature under Entries 20 and 21 in List II was *ultra vires,* in so far as it related to promissory notes executed by agriculturists by reason of the fact that under Entry 28, List I, "cheques, bills of exchange, promissory notes and other like instruments" were matters falling within the exclusive jurisdiction of the Centre. In holding that the legislation was *intra vires,* Sir Maurice Gwyer C. J. stated the reason in these terms :

"It must inevitably happen from time to time that legislation, though purporting to deel with a subject in one list, touches also on a subject in another list, and the different provisions of the enactment may be so closely intertwined that blind adherence to a strictly verbal interpretation would result in a large number of statutes being declared invalid because the Legislature enacting them may appear to have legislated in a forbidden sphere. Hence the rule which has been evolved by the Judicial Committee whereby the impugned statute is examined to ascertain its 'pith and substance' of its 'true nature and character', for the purpose of determining whether it is legislation in respect of matters in this list or in that....."

This point arose directly for decision before the Privy Council in *Prafull Kumar Mukherjee* v. *The Bank of Commerce, Ltd.* (5). There, the question was whether the Bengal Money-Lenders Act, 1940, which

(1) [1937] A. C. 355.
(2) [1939] A. C. 117.
(3) [1940] A. C. 513.
(4) [1940] F.C.R. 188.
(5) [1946-47] 74 I.A.23.

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limited the amount recoverable by a money-lender for principal and interest on his loans, was valid in so far as it related to promissory notes. Money-lending is within the exclusive competence of the Provincial Legislature under Item 27 of List II, but promissory note is a topic reserved for the Centre, vide List I, Item 28. It was held by the Privy Council that the pith and substance of the impugned legislation being money-lending, it was valid notwithstanding that it incidentally encroached on a field of legislation reserved for the Centre under Entry 28. After quoting with approval the observations of Sir Maurice Gwyer C.J. in *Subrahmanyan Chettiar* v. *Muttuswami Goundan,* (supra) above quoted, Lord Porter observed :

"Their Lordships agree that this passage correctly describes the grounds on which the rule is founded, and that it applies to Indian as well as to Dominion legislation.

"No doubt experience of past difficulties has made the provisions of the Indian Act more exact in some particulars, and the existence of the Concurrent List has made it easier to distinguish between those matters which are essential in determining to which list particular provision should be attributed and those which are merely incidental. But the overlapping of subject-matter is not avoided by substituting three lists for two, or even by arranging for a heirarchy of jurisdictions. Subjects must still overlap, and where they do, the question must be asked what in pith and substance is the effect of the enactment of which complaint is made, and in what list is its true nature and character to be found. If these questions could not be asked, much beneficient legislation would be stifled at birth, and many of the subjects entrusted to Provincial legislation could never effectively be dealt with."

Then, dealing with the question of the extent of the invasion by the Provincial legislation into the Federal fields, Lord Porter observed :

"No doubt it is an important matter, not, as their Lordships think, because the validity of an Act can be determined by discriminating between degrees of invasion, but for the purpose of determining what is the

pith and substance of the impugned Act. Its provisions may advance so far into Federal territory as to show that its true nature is not concerned with Provincial matters, but the question is not, has it trespassed more or less, but is the trespass, whatever it be, such as to show that the pith and substance of the impugned Act is not money-lending but promissory notes or banking ? Once that question is determined the Act falls on one or the other side of the line and can be seen as valid or invalid according to its true content."

Then, there is the decision of the Federal Court in *Lakhi Narayan Das* v. *The Province of Bihar*(1). There, the question related to the validity of Ordinance No. IV of 1949 promulgated by the Governor of Bihar. It was attacked on the ground that as a legislation in terms of the Ordinance would have been void, under s. 107(1) of the Government of India Act, the Ordinance itself was void. The object of the Ordinance was the maintenance of public order, and under Entry 1 of List II, that is a topic within the exclusive competence of the Province. Then the Ordinance provided for preventive detention, imposition of collective fines, control of processions and public meetings, and there were special provisions for arrest and trial for offences under the Act. The contention was that though the sections of the Ordinance relating to maintenance of public order might be covered by Entry 1 in List II, the sections constituting the offences and providing for search and trial fell within Items 1 and 2 of the Concurrent List, and they were void as being repugnant to the provisions of the Criminal Procedure Code. In rejecting this contention, Mukherjea J. observed :

"Thus all the provisions of the Ordinance relate to or are concerned primarily with the maintenance of public order in the Province of Bihar and provide for preventive detention and similar other measures in connection with the same. It is true that violation of the provisions of the Ordinance or of orders passed under it have been made criminal offences but offences against laws with respect to matters specified in List II

(1) [1949] F.C.R. 693.

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would come within Item 37 of List II itself, and have been expressly excluded from Item 1 of the Concurrent List. The ancillary matters laying down the procedure for trial of such offences and the conferring of jurisdiction on certain courts for that purpose would be covered completely by Item 2 of List II and it is not necessary for the Provincial Legislature to invoke the powers under Item 2 of the Concurrent List."

He accordingly held that the entire legislation fell within Entries 1 and 2 of List II, and that no question of repugnancy under s. 107(1) arose. This reasoning furnishes a complete answer to the contention of the appellants.

The position, then, might thus be summed up: When a law is impugned on the ground that it is *ultra vires* the powers of the legislature which enacted it, what has to be ascertained is the true character of the legislation. To do that, one must have regard to the enactment as a whole, to its objects and to the scope and effect of its provisions. If on such examination it is found that the legislation is in substance one on a matter assigned to the legislature, then it must be held to be valid in its entirety, even though it might incidentally trench on matters which are beyond its competence. It would be quite an erroneous approcah to the question to view such a statute not as an organic whole, but as a mere collection of sections, then disintegrate it into parts, examine under what heads of legislation those parts would severally fall, and by that process determine what portions thereof are *intra vires*, and what are not. Now, the Madras Prohibition Act is, as already stated, both in form and in substance, a law relating to intoxicating liquors. The presumptions in s. 4(2) are not presumptions which are to be raised in the trial of all criminal cases, as are those enacted in the Evidence Act. They are to be raised only in the trial of offences under s. 4(1) of the Act. They are therefore purely ancillary to the exercise of the legislative power in respect of Entry 31 in List II. So also, the provisions relating to search, seizure and arrest in sections 28 to 32 are only with reference to offences

committed or suspected to have been committed under the Act. They have no operation generally or to offences which fall outside the Act. Neither the presumptions in section 4(2) nor the provisions contained in sections 28 to 32 have any operation apart from offences created by the Act, and must, in our opinion, be held to be wholly ancillary to the legislation under Entry 31 in List II. The Madras Prohibition Act is thus in its entirety a law within the exclusive competence of the Provincial Legislature, and the question of repugnancy under s. 107(1) does not arise.

(2) It is next contended that the presumptions raised in s. 4(2) of the Act are repugnant to Art. 14 of the Constitution, and that the section must accordingly be declared to have become void under Art. 13(1). We are unable to see how s. 4(2) offends the requirement as to equality before law or the equal protection of laws. The presumptions enacted therein have to be raised against all persons against whom the facts mentioned therein are established. The argument of Mr. N. C. Chatterjee is that the facts set out in s. 4(2) on which the presumption of guilt is raised have no reasonable relation to the offences themselves, that for example, possession of liquor can be no evidence of possession of materials or apparatus for manufacture of liquor under s. 4(1)(g), nor possession of materials, apparatus for manufacture of liquor, evidence of possession or consumption of liquor under s. 4(1) (a) and (j), and that therefore the impugned provision must be struck down as denying equal protection. He relied in support of this contention on the following observations of Holmes J. in *William N. McFarland* v. *American Sugar Refining Company* (1) :

"As to the presumptions, of course the legislatures may go a good way in raising one or in changing the burden of proof, but there are limits. It is essential that there shall be some rational connection between the fact proved and the ultimate fact presumed, and that the inference of one fact from proof of another shall not be so unreasonable as to be a purely arbitrary mandate. *Mobile J. & K.C.R. Co.* v. *Turnipseed* (2)."

(1) 241 U.S. 79 at 86-87 ; 60 L. Ed. 899,904.
(2) 219 U.S.35,43 ; 55 L. Ed. 78,80.

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The law on this subject is thus stated by Rottaschaefer on Constitutional Law, 1939 Edition, at page 835 :

"The power of a legislature to prescribe rules of evidence is universally recognised, but it is equally well established that due process limits it in this matter. It may establish rebuttable presumptions only if there is a rational connection between what is proved and what is permitted to be inferred therefrom."

The law would thus appear to be based on the due process clause, and it is extremely doubtful whether it can have application under our Constitution. But a reference to American authorities clearly shows that the presumptions of the kind enacted in s. 4(2) have been upheld as reasonable and not hit by the due process or equal protection clause. In *Albert J. Adams* v. *People of the State of New York* (1), a law of New York had made it an offence to be knowingly in possession of gambling instruments, and enacted further that possession of such instruments was presumptive evidence of knowledge. It is thus in terms similar to s. 4(1) (a) of the Act, which makes it an offence to be in possession of liquor, and to s. 4(2) which raises a rebuttable presumption of guilt under s. 4(1)(a). In rejecting the contention that the presumption was a violation of the due process clause, the Court observed :

"We fail to perceive any force in this argument. The policy slips are property of an unusal character, and not likely, particularly in large quantities, to be found in the possession of innocent parties. Like other gambling paraphernalia, their possession indicates their use or intended use, and may well raise some inference against their possessor in the absence of explanation. Such is the effect of this statute. Innocent persons would have no trouble in explaining the possession of these tickets, and in any event the possession is only *prima facie* evidence, and the party is permitted to produce such testimony as will show the truth concerning the possession of the slips. Furthermore, it is within the established power of the state to prescribe the evidence which is to be received in the courts of its own government."

(1) 192 U.S. 585 ; 48 L. Ed. 575.

In *Robert Hawes* v. *State of Georgia*(1), the question arose with reference to a statute of the State of Georgia, which had made it an offence to knowingly permit persons to locate in premises apparatus for distilling and manufacturing prohibited liquors. It also enacted a presumption that when such apparatus was found in a place, the person in occupation thereof shall be presumed to have knowingly permitted the location of the apparatus. The question was whether this presumption was repugnant to the due process clause. In holding that it was not, the Court observed :

"Distilling spirits is not an ordinary incident of a farm, and, in a prohibition state, has illicit character and purpose, and certainly is not so silent and obscure in use that one who rented a farm upon which it was or had been conducted would probably be ignorant of it. On the contrary, it may be presumed that one on such a farm, or one who occupies it, will know what there is upon it. It is not arbitrary for the state to act upon the presumption and erect it into evidence of knowledge ; not peremptory, of course, but subject to explanation, and affording the means of explanation."

It is therefore clear that even on the application of the due process clause, the presumptions laid down in s. 4(2) cannot be struck down as unconstitutional. We should add that the construction which the appellants seek to put on s. 4(2) that a person in possession of liquor could under that section, be presumed to have committed an offence under s. 4(1) (g) or that a person who is in possession of materials, implement or apparatus could be presumed to have committed offences under s. 4(1)(a) and (j) is not correct. In our opinion, the matters mentioned in s. 4(2) should be read distributively in relation to the offences mentioned in s. 4(1). Possession of liquor, for example, is an offence under s. 4(1) (a). The presumption in s. 4(2) is that if it is found in the possession of a person, he should be presumed to have committed the offence under s. 4(1) (a), unless he could give satisfactory explanation therefor, as for example, that it must have been foisted in the place without his knowledge. Likewise, it would be an

(1) 258 U.S. 1; 66.L. Ed. 431.

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offence under s. 4(1)(g) to be in possession of materials, still, implement or apparatus whatsoever for the tapping of toddy or the manufacture of liquor. Under s. 4(2)(a), if a person is found to be in possession of materials or other things mentioned in the sub-section, there is a presumption that he has committed an offence under s. 4(1)(g), but it is open to him to account satisfactorily therefor. The contention, therefore, that there is no reasonable relation between the presumption and the offence is, in our opinion, based on a misreading of the section.

Both the contentions urged on behalf of the appellants having failed, these appeals are dismissed.

Appeal dismissed.

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November, 29.

MOHAMMAD GHOUSE

v.

STATE OF ANDHRA

[S. R. DAS C.J., BHAGWATI, VENKATARAMA AYYAR, B. P. SINHA and S. K. DAS, JJ.]

Government - Servant—Judicial Officer—Disciplinary Proceedings—Enquiry into charges—Jurisdiction of the High Court—Order of suspension pending final orders by the Government—Power of the High Court—Constitution of India, Art. 311—Madras Civil Services (Classification, Control and Appeal) Rules, rr. 13, 17(e)—Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1948—Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules, 1953, r. 4(1)(a).

The appellant was at the relevant dates posted as Subordinate Judge at Masulipatam and Amalapuram. Charges were made against him of bribery and serious irregularities in the discharge of official duties, and they were enquired into by one of the judges of the Madras High Court who sent his reports on August 20, 1953, and November 10, 1953. On the basis of the reports the High Court decided on January 25, 1954, that the appellant should be dismissed from service on the charge of bribery and removed from service on the charge of irregularities, and on January 28, 1954, placed him on suspension until further orders. The appellant moved the High Court under Art. 226 of the Constitution of India for quashing the order of suspension on the ground (1) that under r. 4(1)(a) of the Andhra Civil Services (Disciplinary Proceedings Tribunal) Rules, 1953, an enquiry into the