

K. L. SUBBAYYA

v.

STATE OF KARNATAKA

January 24, 1979

[S. MURTAZA FAZAL ALI AND A. D. KOSHAL, JJ.]

Mysore Excise Act, s. 54, non-compliance of provisions under, if vitates conviction—Ss. 53 and 54, purpose.

The appellant was convicted under s. 34 of the Mysore Excise Act and sentenced to three months R.I. and a fine of Rs. 100/- for being in possession of 48 bottles of liquor, recovered from the car being driven by him.

It was contended that the provisions of s. 54 had not been complied with, and the search was made without jurisdiction.

Allowing the appeal, the Court,

HELD : 1. The Inspector who searched the car of the appellant had not made any record of any ground on the basis of which he had a reasonable belief that an offence under the Act, was being committed, before proceeding to search the car, and thus the provisions of s. 54 were not at all complied with, thereby rendering the entire search without jurisdiction and, as a logical corollary, vitiating the conviction. [1132H, 1133A-B]

2. Both, Sections 53 and 54 contain valuable safeguards for the liberty of the citizen in order to protect them from ill founded or frivolous prosecution or harassment. [1133B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 10 of 1974.

Appeal by Special Leave from the Judgment and Order dated 22-11-1973 of the Karnataka High Court in Criminal Appeal No. 221/73.

S. S. Javali and B. P. Singh for the Appellant.

M. Veerappa and J. R. Dass for the Respondent.

The Judgment of the Court was delivered by

FAZAL ALI, J.—In this appeal by Special Leave the appellant has been convicted under section 34 of the Mysore Excise Act and sentenced to three months' rigorous imprisonment and a fine of Rs. 100/- for being in possession of 48 bottles of liquor which were recovered from a car which was being driven by the appellant. Mr. Javali appearing for the appellant has raised a short point before us. He has submitted that the Inspector of Excise who searched the car along with the panchas had no jurisdiction to do so because he did so without complying with

A the provisions of section 54 of the Excise Act. In our opinion, the contention is well-founded and must prevail, Section 53 runs thus :

"If a Magistrate, upon information and after such inquiry (if any) as he thinks necessary, has reasons to believe that an offence under section 32, section 33, section 34, section 36 or section 37 has been, is being or is likely to be committed, he may issue a warrant—

B (a) for the search of any place in which he has reason to believe, that any intoxicant still, utensil, implement, apparatus or materials which are used for the commission of such offence or in respect of which such has been, is being, or is likely to be, committed, are kept or concealed, and

C (b) for the arrest of any person whom he has reason to believe to have been, to be, or to be likely to be engaged in the commission of any such offence."

D Thus this section relates to a contingency where the Statute enjoins that any inspector before searching a place must obtain a warrant from the magistrate. Section 54 is a special provision which arises in urgent cases where it may not be possible for the officer concerned to get a warrant from the Magistrate. Section 54 runs thus :

E "Whenever the Excise Commissioner or a Deputy Commissioner or any police officer not below the rank of an officer incharge of a police station or any Excise Officer not below such rank as may be prescribed has reason to believe that an offence under section 32, section 33, section 34, section 36, or section 37 has been, is being, or is likely to be committed, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence, he may after recording the grounds of his belief—

F (a) at any time by day or by night enter and search any place and seize anything found therein which he has reason to believe to be liable to confiscation under this Act; and

G (b) detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid."

H

In the instant case, it is admitted that the inspector who searched the car of the appellant had not made any record of any ground on the basis

of which he had a reasonable belief that an offence under the Act, was being committed before proceeding to search the car and thus the provisions of section 54 were not at all complied with.

This, therefore, renders the entire search without jurisdiction and as a logical corollary, vitiates the conviction. We feel that both sections 53 and 54 contain valuable safeguards for the liberty of the citizen in order to protect them from ill-founded or frivolous prosecution or harassment. The point was taken before the High Court which appears to have brushed aside this legal lacuna without making any real attempt to analyse the effect of the provisions of section 53 and 54. The High Court observed that these two sections were wholly irrelevant. With due respect, we are unable to approve of such a cryptic approach to a legal question which is of far reaching consequences. It was, however, suggested that the word "place" would not include the car, but the definition of the word "place" under the Act clearly includes vehicle which would include a car. Thus the ground on which the argument of the petitioner has been rejected by the High Court cannot be sustained by us. We are satisfied that there has been a direct non-compliance of the provisions of section 54 which renders the search completely without jurisdiction. In this view of the matter, the appeal is allowed, the conviction and sentence passed on the appellant is set aside and he is acquitted of the charges framed against him.

M. R.

Appeal allowed.