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RAM SHANKAR

v.

REGINAM

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[SUPREME COURT, 1967 (Mills-Owens C.J.), 10th, 27th February]

Appellate Jurisdiction

Criminal law—charge—keeping liquor in excess of reasonable personal requirements—some liquor in shop and some in adjoining building—charge alleging total quantity not C *bad for duplicity or uncertainty—consideration of question whether liquor "excess" limited to quantity found on premises specified in charge—Liquor Ordinance 1962, s.96 (1)(b)—Criminal Procedure Code (Cap. 9) s.123(b)(i).*

The appellant was charged with keeping liquor in excess of his own personal requirements in a building adjoining a shop of which he was the proprietor, contrary to section 96(1)(b) of the Liquor Ordinance, 1962. D That subsection read with subsection (a), prohibits the keeping of such excess liquor in any part of "such shop or adjoining building" to which the public do not normally have access. Some of the liquor which was the subject of the proceedings was found in a storeroom, which the magistrate found to be a part of the shop to which the public did not normally have access, and the remainder in an adjoining building to which the public likewise did not have access. The quantity of liquor included E in the Particulars of Offence was the total of these two amounts.

Held: 1. Section 96(1)(b) of the Liquor Ordinance, 1962, creates only one offence, the keeping of excess liquor; a charge alleging the keeping of excess liquor in both a part of the shop to which the public do not normally have access and a part of an adjoining building to which the public do not normally have access would not be bad for duplicity or F uncertainty.

2. The present charge related only to the keeping of excess liquor in an adjoining building, and as the storeroom did not form part of the adjoining building the liquor found there should have been disregarded in determining whether the liquor the subject of the charge was in excess of reasonable personal requirements.

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The charge was in the following terms :—

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Statement of Offence

KEEPING LIQUOR IN EXCESS OF HIS PERSONAL REQUIREMENTS:

Contrary to Section 96 (1) (b) of the Liquor Ordinance No. 23 of 1962.

Particulars of Offience

H RAM SHANKAR s/o Hari Gyan, on the 24th day of June, 1966 being the holder of a retail store licence in respect of a shop premises situated in Toorak Rd, Suva in the Central Division, kept in a building, adjoining to the said shop, Liquor namely 149 bottles of beer, 17 cans of beer, 7 bottles and 28 half bottles of whisky, 13 bottles and 12 half bottles of gin, 11 bottles and 2 half bottles of rum and 13 bottles of stout, in excess of his own reasonable personal requirements.

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3. Nevertheless, even on the basis of the smaller quantity found in the adjoining building, the only reasonable conclusion was that it was in excess of the appellant's reasonable personal requirements and the appeal could not succeed.

Cases referred to: *Thomson v. Knights* [1947] K.B.336; [1947] 1 All E.R.112: *Bastin v. Davies* [1950] 2 K.B.579; [1950] 1 All E.R.1095: *Ram Shankar v. R.* (1965) 11 F.L.R. 203.

Appeal against a conviction in the Magistrate's Court.

F. M. K. Sherani for the appellant.

J. R. Reddy for the respondent.

The facts sufficiently appear from the judgment.

MILLS-OWENS C.J.: [27th February 1967]—

This is an appeal by a shopkeeper against his conviction by a Magistrate on a charge of keeping liquor in excess of his own reasonable personal requirements, contrary to section 96 (1) (b) of the Liquor Ordinance, 1962.

The section, so far as material, reads —

"96. (1) Any person owning or managing any shop, whether licensed under the Licence Ordinance or not, if the premises are not licensed under this Ordinance —

(a) shall not store or keep or permit to be stored or kept, any liquor in any part of such shop to which the public normally have access or in any adjoining building to which the public normally have access;

(b) shall not store or keep or permit to be stored or kept, any liquor in excess of his own reasonable personal requirements in any other part of such shop or adjoining building."

The appellant was found to be the occupier of various parts of a single building; in particular, of a shop with an adjoining office and storeroom, and of two flats. Substantial quantities of liquor were found in the storeroom, and in the flats. The learned Magistrate found such quantities of liquor, in the aggregate, to be in excess of the reasonable personal requirements of the appellant.

The appeal falls within a narrow compass. It is argued that the quantities of liquor found were, wrongly, considered in the aggregate; that paragraph (b) draws a distinction between portions of the 'shop' and any 'adjoining building'; that the storeroom was a part of the 'shop'; that the charge related expressly to the adjoining building (namely, on the evidence, the flats); and that if therefore the quantity of liquor found in the storeroom is disregarded, as on the wording of the charge it ought to be, the quantities found in the flats were not excessive. So it is argued for the appellant.

The Crown meets the argument in this way: paragraph (b), read with the introductory words of the section, does not create two separate offences, namely (1) keeping excess liquor in non-public parts of the shop and (2) keeping excess liquor in an adjoining building; it creates but one offence, namely of keeping excess liquor.

The learned Magistrate referred to the storeroom in these terms —

> "Although the office and the storeroom are in the area structurally designed for the shop, their construction and location are such they are not parts to which the members of the public would normally have access."

Having regard to the terms of the section I must, I think, take this to mean that he regarded the storeroom as a part of the shop, although not a part to which the public have access, i.e. not as falling within paragraph (a) of the section. I may perhaps here refer to a decision of my own on the interpretation of the section. In an appeal by the same appellant, reported in (1965) 11 F.L.R. 203, I said —

> "Manifestly, in my view, a main purpose of the section is to preclude means of evasion of the restrictions placed on shopkeepers. Clearly it was in mind that illicit transactions might take place either on the shop premises or on adjoining premises. Clearly, also, it was in mind that "shop" is an equivocal word which might be construed narrowly as referring to the actual selling area or widely as including other portions of the premises. Further, in point of fact — in country districts in particular — it might be difficult to say whether a particular portion of premises in the occupation of a shopkeeper was part of his shop or part of his living quarters. The mischief aimed at is the prevention of the sale of liquor to the public by persons who are in a favourable position to make illicit sales, namely shopkeepers. So far as the 'adjoining building' is concerned, it must be a building over which the shopkeeper has control, as the section, in terms, is laying down a prohibition on the shopkeeper himself. The section recognises that shop premises may embrace both a part or parts to which the public usually come to be served, and private portions such as offices, storerooms or living quarters. Liquor and the public are to be kept apart, according to the scheme of the section. If liquor were to be allowed to be kept in the public portion of shop premises it would go a long way to defeat the purpose of the legislation. Illicit sales would be rendered most difficult of detection; a bottle could pass from the shopkeeper into the pocket of a purchaser in a fraction of time. The same applies to any adjoining premises of the shopkeeper to which the public have access. It is recognised, however, that the shopkeeper is entitled to keep liquor for his own consumption. The object of the section as it appears to me, is in the first place artificially to extend the area of prohibition, or, as the case may be, restriction, by taking in not only the shop premises but also any adjoining premises in the shopkeeper's control, and then to draw a dividing line between areas to which the public will come and areas to which they will not have access. In the public portions no liquor may be kept; in the non-public portions no excess liquor may be kept. There is no necessity to legislate for buildings which are in the occupation of the shopkeeper but are at a distance from the shop; the opportunity of observation being made upon what might be carried to the shop premises affords a safeguard in itself. In my view, therefore, the distinction that is made between the public portions and the non-public portions, of the shop or adjoining building as the case may be, is a broad distinction based upon the need to prevent transactions which the presence of the public would render easy to carry out but difficult to detect."

In my view the gist of the offence created by paragraph (b) is the keeping of excess liquor. The paragraph creates but one offence. A charge which alleged the keeping of excess liquor in both a part of the shop to which the public do not have access *and* a part of an adjoining building to which the public do not have access would not be bad for duplicity or uncertainty. If it alleged the keeping of excess liquor in those portions of the premises disjunctively it would probably be saved by section 123 (b) (i) of the Criminal Procedure Code; that is to say the use of the word *or* instead of the word *and* would not be held to lead to uncertainty. (See also *Thomson v. Knights* [1947] K.B. 336; cf. *Bastin v. Davies* [1950] 2 K.B. 579).

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In the present case however the charge relates in express terms to the keeping of excess liquor in an adjoining building. In the context of the Magistrate's judgment that must mean the flats. The liquor found in the storeroom ought therefore, having regard to the terms of the charge, to have been disregarded; the charge did not relate to that liquor as the storeroom did not, in terms of the section, form part of the 'adjoining building'. In my opinion, although paragraph (b) creates only one offence, Counsel for the appellant is correct in his contention that it is necessary to disregard the liquor found in the storeroom in determining whether the appellant was guilty of keeping excess liquor as charged; I emphasise "as charged". In arriving at that determination it must be taken into account that the learned Magistrate expressly held that the appellant's explanations for his store of liquor were untrue. I am, it appears to me, entitled and bound to consider whether the lesser quantity of liquor, that found in the flats, kept by the appellant as an unlicensed shopkeeper whose explanations have been disbelieved, could, on any reasonable view of the case, have been held to be not in excess of his reasonable personal requirements. To put it another way, would the trial Magistrate have been virtually bound to come to the same conclusion if he had considered the lesser quantity of liquor only? I have no doubt whatsoever that he would have come to the same conclusion and that this would have been the only reasonable conclusion. In these circumstances, although the appellant is technically correct in his ground of appeal it makes no difference in the result. The appeal is therefore dismissed.

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Appeal dismissed.