

REVISIONAL CRIMINAL.

Before Mr. Justice Nánābhái Haridās and Sir W. Wedderburn, Bart., Justice,

1885.
April 6.

QUEEN EMPRESS *v.* PESTANJI BARJORJI.*

Abkari—Bombay Abkari Act No. V of 1878, Secs. 43 and 53—Possession of distilling materials.

Mere possession, without a license, of utensils for distilling liquor is not an offence punishable under section 43 of the *Abkari Act* (Bombay) No. V of 1878.

It is only in cases where such possession is not satisfactorily accounted for that, under section 53, it is to be presumed, until the contrary is proved, that a person in possession of such utensils has committed an offence under section 43.

THIS was an application for the exercise of the High Court's revisional jurisdiction under section 439 of the Code of Criminal Procedure, Act X of 1882.

The accused was convicted, under section 43 of *Bombay Act V of 1878*, of the offence of keeping in his possession utensils for the purpose of manufacturing liquor, by Rájárám Premánand, Second Class Magistrate of Bulsár, and sentenced to pay a fine of Rs. 30, or, in default, to suffer one month's rigorous imprisonment. The utensils were sent to the Collector for disposal.

On the admission of the accused person, corroborated by other evidence adduced in the case, the Magistrate found that the accused was a distiller of liquor in a village situated within the Native State of Dharampur; that he had closed his shop in that village and removed the distilling utensils to his own village in British territory, to the police pátel of which he gave intimation of his having done so, and that he intended to take them to Bulsár to sell them; that the police came to his house and took away his utensils on the ground that as he had no license they were in his possession illegally.

Upon this finding both the Second Class Magistrate and the First Class Magistrate, in appeal, found the accused guilty under section 43 of the *Abkari Act*.

The accused applied to the High Court for the reversal of his conviction and sentence.

* Criminal Application for Revision, No. 52 of 1885.

Máneeksháh Jehángirsháh Taleyarkhán for the applicant.—A person is not punishable for having possession of utensils for distilling liquor without a license, unless he fails to explain his possession under section 53. Both the Magistrates were wrong in holding that mere possession without a license was sufficient. There must be some element of dishonesty to make a thing an offence, and there was none whatever in this case.

NA'NA'BHA'I HARIDÁS, J.—It appears that the accused Pestanji Barjorji was a distiller of spirits in the Native State of Dharampur. His license to follow that occupation having expired, he removed from Dharampur the copper utensils used in his trade, and was going to sell them at Bulsár. On his way he informed the police pátel of Kosamkuva, a village in British territory, that he had such utensils, and was proceeding to sell them. He was corroborated in this statement by the police pátel and witness No. 8 (Bhagván Kála), and there is no evidence to show that this statement was false. If the statement is true he has satisfactorily accounted for his possession of those utensils, and the presumption which would otherwise arise under section 53 of the Bombay A'bkári Act V of 1878 does not arise. Both the lower Courts have omitted to notice this circumstance, and it does not seem to us that mere possession without a license of such utensils is an offence punishable under section 43. It is only in cases where such possession is not satisfactorily accounted for, that under section 53 it is to be presumed, until the contrary is proved, that the accused person has committed an offence under section 43.

The conviction and sentence are accordingly reversed, and the fine, if levied, to be refunded to the accused.

Máneeksháh Jehángirsháh Taleyarkhán.—I ask the Court to order the restoration of the utensils in the possession of the Collector.

NÁNÁBHÁI HARIDÁS, J.—We need make no order on the subject. The conviction being reversed, the accused must, of course, have his utensils, or their value.

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