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STATE OF GUJARAT

v.

CHINUBHAI GOPALDAS

March 13, 1968

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[M. HIDAYATULLAH, C.J., C. A. VAIDIALINGAM AND
A. N. GROVER, JJ.]

Bombay Prohibition Act, ss. 66(b) and 98—Acquittal of person charged with offence under s. 66(b)—Property in respect of which offence committed may still be confiscated under s. 98.

C

A stock of bottles apparently containing cosmetic preparations was found from the possession of the respondent. On analysis the bottles which were taken as samples were found to contain alcohol and as the respondent did not have any licence for possessing alcohol he was prosecuted under s. 66(b) of the Bombay Prohibition Act. The trying Magistrate acquitted him on the ground that he did not hold the bottles on his own but only as the agent of a wholesale dealer who acknowledged his ownership. While acquitting the respondent the Magistrate ordered the confiscation of the remaining bottles under s. 98 of the Prohibition Act. The respondent went to the High Court against the order of confiscation. The learned Single Judge ordered return of the bottles because according to him it was not proved that the 1500 and odd other bottles also contained intoxicants, and therefore the order under s. 98 of the Act was illegal. The State appealed,

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HELD : Under s. 98 what has to be seen is whether an offence under the Prohibition Act in respect of the property in question has been committed or not. An offence may be demonstrated to be committed although the accused who committed it may not be successfully prosecuted. On proof that there is a contraband article in respect of which an offence has been committed the obvious course is to confiscate it to the State. Therefore in the present case if the court was satisfied that the bottles contained contraband article the bottles could be confiscated. [449 C—E]

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[Order of the High Court set aside with the direction that a few bottles at random should be analysed and if contraband stuff against the prohibition act was found the whole stock should be confiscated.]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 162 of 1965.

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Appeal by special leave from the judgment and order dated January 8, 1965 of the Gujarat High Court in Criminal Appeal No. 345 of 1964.

Urmila Kapur and *S. P. Nayar*, for the appellant.

The respondent did not appear.

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The Judgment of the Court was delivered by

Hidayatullah C.J. This is an appeal by special leave against the judgment and order of a learned Single Judge of the High

Court of Gujarat, January 8, 1965, by which an order confiscating 1500 and odd bottles said to contain intoxicating liquor by the City Magistrate, 8th Court, Ahmedabad, has been set aside. A

The facts of the case are as follows. On January 9, 1963, Sub-Inspector, Benot of Ahmedabad City raided a godown consisting of two rooms in Serial No. 1510/0 and Survey No. 324/0. He found several deal boxes which were opened and each box was found to contain 144 bottles packed with grass, each bottle containing 4 oz. of some liquid. Bottles were of two kinds, one containing yellow liquid and the other a red liquid. The bottles containing yellow liquid were labelled 'U. D. Colton Solvek Cosmetics Bombay, 28.', and the bottles containing red liquid were labelled 'Jasmine Batch No. 3. Solvek Cosmetics Bombay.' From these bottles, two bottles, one of each kind, were selected and were sent to the Chemical Examiner, Baroda for test. Before sending them, the Panchas were allowed to seal the bottles with paper slips containing the signature of panchas pasted on them for identification. On analysis, they were found to contain alcohol and the respondent Chinubhai Gopaldas was prosecuted under s. 66(b) of the Bombay Prohibition Act. The other bottles numbering 1584 containing 6336 oz. of alleged alcohol were kept intact. B
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Gopal Das's prosecution failed. He was acquitted by the City Magistrate, because according to him, it was not proved beyond reasonable doubt that he was in possession of these bottles on his own. It was found that he possessed them as agents of a wholesale merchant. It is in evidence however that he did not possess a permit or licence for possessing alcohol. The Magistrate while acquitting him ordered the confiscation of the remaining bottles under s. 98 of the Prohibition Act. E

The State Government did not appeal against the acquittal. Gopaldas went to the High Court in appeal against the order of confiscation. The learned Single Judge of the High Court ordered return of the bottles, because according to him it was not proved that the 1500 and odd other bottles also contained intoxicants. He therefore held that the confiscation of the bottles was illegal as no order under s. 98 of the Bombay Prohibition Act could be passed. F
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In this appeal by the State of Gujarat it is contended that s. 98 applies to the case. That section reads as follows :

"Whenever any offence punishable under this Act has been committed, H

- (a) any intoxicant, hemp, *shora*, flowers, molasses, materials, still, utensil, implement or

A apparatus in respect of which the offence has been committed,

shall be confiscated by the order of the Court.”

B The short question therefore is whether it can be said that in respect of the 1500 and odd bottles, an offence punishable under the Prohibition Act had been committed. It is no doubt true that the person who was charged with committing an offence was found not guilty, but the question is not whether the accused has been successfully brought to book, but whether the offence in respect of the property has been committed or not.

C There is distinction between the two. An offence may be demonstrated to be committed although the accused who committed it may not be successfully prosecuted. We may give an example. Suppose in a house a vast quantity of contraband opium is found. The householder may get off because the opium was found from a place which was open and had access to strangers. He may get the benefit of doubt and be acquitted, but it is clear that in so far as the opium is concerned, an offence must be deemed to have been committed, and if it is proved that the contraband article was opium, it would be remarkable that the order should be that the opium be returned to the householder. In these circumstances, on proof that the contraband article in respect of which an offence has been committed is proved to exist, the obvious course would be to confiscate it to the State. In the present case, the two bottles which were sent to the Chemical Examiner were said to contain alcohol although there was some doubt in the mind of the Magistrate as to whether there was no chance of any malpractice. Be that as it may, there are the other bottles intact. There is some evidence to show that they were in the original packing and were a proprietary product. The manufacturer came as a witness and deposed that the liquids were bottled by him as a proprietary manufacture. In these circumstances, it would be fair to assume that all of them were of the same kind as the ones which were sent for chemical examination. However an examination of random samples can be made and if they satisfy the court that the bottles contain contraband articles the bottles can be confiscated. The order of the High Court is thus set aside, but instead of restoring the order of confiscation we order that a few bottles at random should be analysed and if contraband stuff against the Prohibition Act is found the whole stock shall be confiscated.

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The appeal is allowed and the case is remanded as ordered.

G.C.

Appeal allowed.