
(1937) 07 BOM CK 0005
In the Bombay High Court
Case No : Criminal Reference No. 36 of 1937

Emperor	Vs	APPELLANT
Baburao Appa Lingayat		RESPONDENT

Date of Decision : 05-07-1937

Acts Referred:

Citation : AIR 1937 Bom 480 : (1937) 39 BOMLR 832

Hon'ble Judges : Sen, J; Barlee, J

Bench : Division Bench

Judgement

Barlee, J.—The applicant has been convicted under the Bombay (District) Tobacco Act, 1933. He was a wholesale travelling agent of a wholesale-tobacco merchant. He visited the town of Pimpalner by motor car and sold 8000 bidis wholesale to two local dealers. Later it was found that there were 11000 bidis in his car. The learned Magistrate asked him whether he had a hawker's license for selling bidis. He replied in the negative. He denied that he had ever hawked bidis in the Nasik District. The learned Magistrate, however, convicted him and fined him Rs. 30 on the ground that he had admitted that he had sold 8000 bidis without a hawker's license, and had 11000 in his possession without a license for sale.

2. We think that the learned Magistrate has erred, for a man may possess and sell bidis without a hawker's license. In fact a hawker's license is only one of several forms of licenses which are issued by Government for the sale of tobacco. We find from the Bombay Government Gazette of November 28, 1935, that licenses may be granted for the privilege of selling tobacco wholesale, and for the privilege of selling tobacco retail, as well as for the privilege of hawking. "Wholesale sale," according to the Act, means a sale of tobacco to traders for the purpose of trade. "Hawker" means "a person who goes from place to place or from house to house carrying or exposing for sale tobacco or exposing samples of tobacco to be afterwards delivered." It is clear then that the two functions may overlap, for wholesale trade may be carried on, as it is widely carried on in many

countries, by means of travellers whose conduct comes within the definition of "hawking."

3. To see whether the applicant could be rightly convicted we have to look to the terms of his license. He was granted a license for the privilege of selling tobacco wholesale throughout the whole of the Bombay Presidency and Sind with the exception of the city of Bombay. The license gives the address of his principal shop and his branch shop and apparently any sale in any portion of the Bombay Presidency is covered by this license so long as the sale is wholesale. The learned Government Pleader asks us to decide that the wide powers given to the licensee by the first clause of the license are cut down by Clause (3) and Clause (4). Clause 3 provides that a licensee shall have constantly fixed up in a conspicuous part of the front of his shops or places of business a signboard bearing in legible characters his name and other details; and Clause (4) says that he may sell tobacco at places other than his regular shops or places of business without exhibiting such a signboard. The learned Government Pleader argues that the mention of shops or "places of business" precludes by implication sale at any place outside a shop or place of business. We are unable to accept this interpretation. It appears to us that Clause (4) is an enabling section and not a restricting section and that, if we give a beneficial interpretation to this document, we must hold that the licensee was entitled to sell personally or through agents and servants wholesale at any place in the Bombay Presidency and that he was entitled to conduct his business by means of travellers.

4. This being so, we think that the sale at Pimpalner by the licensee's agent of bidis wholesale to the tobacco merchants was covered by his license. It was not necessary for the agent to have a license for hawking though his procedure would come within the definition of "hawking," since the license for wholesale sale was wide enough to cover wholesale hawking. In fact he could not have been given a license for hawking as a hawker is bound by the terms of his hawker's license to confine his sales to consumers only, that is he must necessarily sell retail.

5. Accordingly we accept the reference made by the learned Sessions Judge and we set aside the conviction and sentence. The order of confiscation of 11000 bidis is also set aside.