
(1947) 09 BOM CK 0003

In the Bombay High Court

Case No : Criminal Revision Application No. 420 of 1947

Emperor

APPELLANT

Vs

Dattatraya Sitaram Biniwala

RESPONDENT

Date of Decision : 30-09-1947

Acts Referred:

Bombay Rent Restriction Act, 1939 — Section 10(4)

Citation : (1948) 50 BOMLR 169

Hon'ble Judges : Rajadyaksha, J;Jahagirdar, J

Bench : Division Bench

Judgement

Jahagirdhar, J.—This is a revision application by the applicant against the order of conviction and sentence u/s 10(4) read with Section 10(2) of the Bombay Rent Restriction Act, 1939. The facts as alleged by the prosecution are that Manaji Trust owns a number of chawls at Parel and it is managed by one Kalewar, who is a witness in this case. The accused is a munim under Kalewar. His business is to get the rents collected, keep accounts and manage the property. The complainant was formerly residing in one of these Trust chawls, and in May, 1944, he helped one Irayya to get room No. 24 on the 3rd floor, chawl No. 5, in his name and the complainant resided with him. In March, 1946, Irayya gave a writing Ex. 8 to the complainant stating that he had no right to the room and that thenceforward he would live in the room and pay the rent. The room, however, continued to be in the name of Irayya. This arrangement continued till about February, 1947, when Irayya again left for his native place taking all his belongings except a "setranji". The complainant then thought, of getting the room transferred to his name. He therefore about the beginning of February approached the Bhayya, the rent collector, and the accused for that purpose. It is alleged that they demanded Rs. 100 as premium for transferring the room and that the complainant offered to pay Rs. 50. They insisted on receiving Rs. 100 as the premium. The complainant then offered to pay it and on February 14, 1947, he contacted the police. His first information was recorded. Therein he has stated that when he asked the accused to transfer the room to him the accused

demanded Rs. 100 as premium and later on he stated that as the rent had been paid up-to-date he would offer to pay this premium in the month of March and would demand a receipt in his own name. Then on March 6, 1947, Sub-Inspector Patkar handed over ten Government currency notes of Rs. 10 to the complainant in the presence of panch Rajayya Mallaya and made a panchnama in a hotel at Thakurdwar and instructed him to hand over the sum to the accused. The complainant in the company of the panch went to the office of the accused at Nana Shankar Wadi and there the accused was in the office. He came out and asked the complainant why he had come. Then on the complainant telling him that he had brought the money he asked him how much he, had brought. He told him that he had brought Rs. 100. The accused asked the complainant to wait outside for some time and then he went into his office room. The complainant thereafter sent the panch to look for the police and as the panch did not come he himself came out on the road. In the meanwhile the accused also came out on the road apparently in search of the office boy. He asked the complainant why he was waiting there. Then the complainant took him to a hotel nearby and the complainant saw at that time that Sub-Inspector Patkar and other police constables were also in the hotel. At the hotel near the tea table the complainant handed over Rs. 100 to him telling him that the transfer of the room should be made before the 19th as Irayya was expected to come to Bombay, and it is alleged that accused told him not to be afraid of the arrival of Irayya because he was there. The accused put the one hundred rupees notes in the upper pocket of the shirt, in the meanwhile the Police Sub-Inspector came and attached the one hundred rupees notes as well as Ex. B-I which is a copy of exhibit B, which was handed over to the complainant by the accused along with the currency notes of Rs. 100. In support of this case the prosecution have examined the complainant, the Sub-Inspector, the panch witness and Kalewar, and the accused has examined the Bhayya, the rent collector. The defence of the accused was that he received the amount of Rs. 100 from the complainant for the legal expenses in evicting Irayya because he told him that it was not possible to evict Irayya as he had paid the rent and as he had not terminated the tenancy by giving notice to him. He, however, told him that unless legal proceedings were taken it was not possible to transfer the room to the complainant. Then the complainant offered to pay the expenses of the legal proceedings and he therefore paid those Rs. 100 not as pugree but for expenses for taking legal proceedings for evicting Irayya. This explanation of the accused was rejected by the learned Presidency Magistrate and relying on the evidence of the complainant and the other witnesses and taking into consideration the surrounding circumstances the learned Presidency Magistrate has convicted him under Section 10(4) read with Section 10(1) of the Bombay Rent Restriction Act, 1939, and sentenced him to suffer simple imprisonment for six months. Against this order the applicant has come in revision.

2. At the time of the admission of this revision application this Court issued a rule for enhancement of the sentence. Now, as there was a rule issued for the

enhancement of the sentence, the accused was entitled to challenge the conviction and the learned advocate Mr. Desai, who appears for the accused, has challenged the conviction on merits as well as on a point of law, to which I will come later. It is admitted that the accused accepted Rs. 100, but his only contention is that that amount was paid to him as expenses for taking legal proceedings against Irayya and not as pugree for transferring the room from Irayya's name to the complainant's name. And he has further contended that it is the complainant alone who says that the amoxint was given as pugree, and as he is not corroborated either by the evidence of the panch or by the evidence of the Sub-Inspector, it is not safe to base the conviction on the uncorroborated testimony of the complainant whom he calls as a bogus customer. Therefore, we will have to see whether in the first place the explanation offered by the accused is satisfactory. The accused admits that it was he who told him that legal proceedings will have to be taken to evict Irayya and then the complainant offered to bear all the expenses of the legal proceedings and agreed to pay Rs. 100. Now, obviously the rent of the room was Rs. 6 per month and it was not known how the figure of Rs. 100 was arrived at for the expenses of legal proceedings against Irayya. The complainant was willing to pay Rs. 50 and as the quantum of money was not very material, it is difficult to believe why the complainant should offer to pay Rs. 100 unless that amount was demanded by the accused. And, secondly, according to the evidence of Kalewar, legal expenses are paid directly by the party to the lawyer and that he had never taken such deposits nor has he allowed his mehta to receive such deposits in a lump sum at any time. Similarly, the Bhayya Sitalprasad Nandkishore, who is examined by the accused, also says in his cross-examination that in his experience it has never happened that the expenses for the transfer of a room from one man's name to another man's were taken either by the mehta, or by him or by the landlord and credited and account given. So, it is difficult to believe that Rs. 100 were accepted by the mehta as expenses for legal proceedings. If that was the only object, he could have taken the complainant from the tea hotel to his landlord and asked him to pay the money in the office direct to the landlord. One would not expect that: he would take the money himself because both Kalewar and the Bhayya say that such a lump sum had never been recovered either by the mehta or by anybody else. If this explanation offered by the accused is rejected, then we have got to see whether the complainant's story that it was offered as pugree can be accepted. It has to be borne in mind that the complainant wanted to have the room transferred to his name, and he had taken a writing Ex. B from Irayya as far back as 1946 March, and another circumstance which would show that it must have been received as pugree is that even a copy of exhibit B-I was found with one hundred rupees currency notes. That itself corroborates the allegation made by the complainant that the object of the payment was to get the room transferred to his name. Besides, there are other circumstances to show that the amount must have been received as pugree and not as expenses for the legal proceedings. When the complainant went to the accused's office, the accused pretended that he had no time and asked the complainant to wait

outside. But after some time it was surprising to find that the accused came out on the road on the pretext of looking for the office boy and then proceeded to the tea hotel in the company of the complainant and the panch. If he was not very anxious about the whole thing, one would not expect that he would come outside his office and agree to go in a tea hotel. This conduct on the part of the accused is very suspicious. It is urged by Mr. Desai that in this particular case the panch is brought by the complainant and not by the police and therefore no importance can be attached to the evidence of the panch. But the evidence of the panch would have been material if the accused denied the acceptance of the money. But as the acceptance of Rs. 100 is admitted by the accused himself, nothing turns on the evidence of the panch himself. The whole case turns on the fact as to whether one is prepared to accept the explanation given by the accused. Moreover, the evidence of the complainant is to the effect that at the time of payment of Rs. 100 he told the accused that he should transfer the room immediately to him before the 10th as Irayya was expected to arrive in Bombay, and then the accused told him not to be afraid of Irayya as he was there. This part of the story is corroborated by the evidence of the panch who says that the accused assured the complainant that he need not be afraid even if Irayya arrived in Bombay. If this part of the story is accepted as true, then the explanation offered by the accused has got to be rejected. We therefore have no hesitation in coming to the conclusion that the amount was offered to the accused as pugree and not as expenses for the litigation. We fail to understand what sort of litigation was to be fought in the Court. The rent had been paid for the month of January and there was no notice given by Irayya to the landlord that he was vacating the room. Therefore there is no question of taking any ejectment proceedings against Irayya in March. It appears that the complainant on the strength of Ex. B was asking the accused to transfer the room and therefore he supplied him with the copy of exhibit B. It is therefore clear that no legal proceedings could be contemplated.

3. The other explanation offered by the learned advocate for the accused is this. That the complainant was a friend of Vithal and complainant and Vithal were on very bad terms with the accused and somehow they wanted to bring the accused into trouble. If this version about the motive on the part of the complainant is accepted, one would not be prepared to believe that the accused would accept the money from such persons who were on inimical terms with him. We therefore hold that the accused accepted the money as pugree from the complainant promising him that the room would be transferred to the name of the complainant.

4. During the course of arguments, Mr. Desai has raised a point of law and it is this. According to the evidence of Kalewar, the landlord, no one has authority to consent to the transfer of a room standing in the name of one person to a different person. It is therefore argued that as the accused is merely a collector of rent and not a landlord, acceptance of a premium by him is not within the purview of Section 10(4) of the Bombay Rent Restriction Act. The contention is

that any "person" contemplated by Section 10(1) is the person who has the power or authority to grant, renew or continue a tenancy and it is he who is prohibited from accepting a premium as a consideration for such grant, renewal or continuance. In other words, the submission is that the word "person" in effect means a landlord and this submission is sought to be re-inforced by reference to Sub-section (2) of Section 10 which enables a person who has paid a premium to recover it from the "landlord." In support of this reasoning Mr. Desai has referred to the case of *Remington v. Larchin* [1921] 3 K.B. 404, in which on somewhat similarly worded Section 6(1) of the Increase of Rent and Mortgage Interest (Restriction) Act, 1920, the Court of Appeal held that the section was capable reasonably of two possible constructions, that the section being a penal one, the Court should give to it the more lenient construction, avoiding the imposition of penalty, and that construed in this light the prohibition in the section was limited to the person who required payment of the premium "in addition to the " rent," and " as a condition of the grant, renewal or continuance" by him of his tenancy, namely, the landlord.

5. The words of Section 10(1) of the Bombay Rent Restriction Act are as follows:

It shall not be lawful for any person, in consideration of the grant, renewal or continuance of a tenancy of any premises, to require the payment of any fine, premium or any other like sum in addition to the rent.

6. Sub-section (2) lays down that:

where any such payment has been made after the first day of January 1989, the amount shall be recoverable by the tenant by whom it was made from the landlord, and may without prejudice to any other method of recovery be deducted from any rent payable by him to the landlord.

7. Under Sub-section (4):

Any person who receives directly or through an agent any fine, premium or other like sum in addition to the rent in contravention of Sub-section (1) shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

8. The wording of Section 8(1) of the Increase of Rent and Mortgage Interest (Restriction) Act, 1920, which the Court of Appeal had to construe in *Remington v. Larchin* was:

A person shall not, as a condition of the grant, renewal, or continuance of a tenancy or subtenancy of any dwelling-house to which this Act applies, require the payment of any fine, premium, or other like sum, or the giving of any pecuniary consideration, in addition to the rent, and where any such payment or consideration has been made or given in respect of any such dwelling-house under an agreement made after the 25th day of March, 1920, the amount or value thereof shall be recoverable by the person by whom it was made or given.

9. By Sub-section (2):

A person requiring any payment or the giving of any consideration in contravention of this section shall be liable on summary conviction to a fine not exceeding one hundred pounds....

10. It will be noticed that the two Sections are closely analogous. In the English Act, the words are "a person" and "as a condition," while the Bombay Act uses the words "any person" and "as consideration."

11. In the English case, the facts as summarised by Scrutton L.J. were that a tenant holding under three years' agreement desiring to go out of possession before the three years had expired took a payment from an incoming tenant for the surrender of his tenancy, some fixtures, and for procuring from the landlord a grant of a new tenancy for three years. This incoming tenant thereupon brought the action to recover back the premium paid by him from the original tenant. It was argued that Section 1(2) of the Increase of Rent and Mortgage Interest (War Restriction) Act, 1915, replaced by the Act of 1920 contained the words "the fine or other like sum shall be recoverable by the tenant by whom the payment was made from his landlord." The words were wider in Section 8(1) and there was no reference to recovery from the "landlord." Hence, it was contended that Section 8(1) was of a wider application and was not confined in its operation merely to landlords. The Court of Appeal rejected that contention. They expressed an opinion that the change in the wording may possibly be due to the fact that the new Section 8(1) of the Act of 1920 expressly includes something which was not included in the Act of 1915, namely, subletting. On the main point of construction of Section 8(1), Banker L.J. formulated the question as follows:

when the section says that "a person shall not, as a condition of the grant, renewal, or continuance of a tenancy or sub-tenancy...require the payment of any fine, premium or other like sum", does it refer merely to the demand... by the person who grants the tenancy? that is the landlord? or does it include a demand by a third person.

12. All the learned Judges agreed that the section was capable of either construction. But on the whole they preferred the view that the section referred only to the landlord and not to a third person by reason of two considerations:

(1) In dealing with a penal section, when there are two reasonably possible meanings, the Court should adopt the more lenient one.

(2) Section 8 was included in a group of sections which were controlled by the heading "farther restrictions and obligations on landlords and mortgagees."

13. Having regard to these considerations the learned Judges thought that the more natural construction was to read it as applying to the person "who as a condition of his granting a tenancy" requires payment of a fine or premium. This construction was assisted by the use of the words "in addition to the rent" because it is more appropriate to speak of the person requiring a payment "in

addition to the rent" as meaning a person who is in a position to control rent then as including a person who is a stranger to the agreement under which the tenancy is created.

14. It will be noticed that on the plain meaning of the words of the section, even the other construction that Section 8 refers to persons other than landlords was not found unreasonable and the learned Judges ultimately decided in favour of the narrower construction because of the canon of benevolent interpretation of statutes and the fact that the section was included in the group of sections relating to landlords and mortgagees. This latter aid, in the matter of construction of Section 10(1) of the Bombay Act, is not available to us. In fact, the indications are the other way about, While most of the sections of the Bombay Act refer to landlords and tenants, this section alone refers to any person. Even assuming that the term landlord was to be interpreted as meaning an owner, we must attach some importance to this deliberate change in the wording of the section. Moreover, it is not without significance that the Bombay Act uses the words "as a consideration" as against the words "as a condition" in the English Act, Imposition of a condition postulates power to do so and this can rest only with the landlord, whereas "consideration" may be accepted by any one who can use his good offices in bringing about an agreement between the landlord and tenant. Even so, in view of the weight to be attached to this view of the Court of Appeal and the canon of interpretation which enjoins a construction favourable to the subject, we may have been persuaded to take the view which Mr. Desai asks us to take?if we were satisfied that the scheme, of the English Act and the Bombay Act was the same.

15. The most striking difference between the two Acts lies in the definition of the word "landlord." Under the English Act "landlord" includes a person deriving a title under landlord (Section 12(f)) and also includes, in relation to a dwelling house, a person other than a tenant who is or would be but for this Act entitled to possession of the dwelling house (Section 12(g)). The whole scheme contemplates relation between such landlord and tenant. In such a scheme, the imposition of a liability on a third person u/s 8(1) was somewhat foreign to the purpose of the Act and restricting the operation of Section 8(1) to land lord as defined in that Act, made the section consistent although the words used in that section were reasonably capable of the other broader construction. The Bombay Act, however, uses the word landlord in a much wider sense. u/s 4(1) the expression " landlord " means:

any person for the time being entitled to receive rent in respect of any premises? whether on his own account or on account of or on behalf of or for the benefit of any other person.

16. Thus a person entitled to receive rent on behalf of any person is a landlord within the meaning of this section. When the expression has been used in that wider, sense throughout the Act, it would introduce a discordant element if Section 10(1) Was restricted in its application to "landlord" in the ordinary sense

of the term as meaning the owner. This difficulty did not arise in the interpretation of the English Act in *Remington v. Larchin*.

17. Moreover, Section 10(1) and Section 10(2) have to be read together; one is the corollary of the other. Section 10(2) prohibits any person from taking a premium and Section 10(4) makes such person liable to punishment. Section 10(2) enables a person making the payment to recover the same from the "landlord." It can therefore be argued that the person contemplated in Sections 10(1) and 10(4) would mean or at least include a "landlord" as defined in the Act. The accused is undoubtedly a landlord within the meaning of the Act as a person entitled to receive rent on behalf of Kalewar and would therefore come within the ambit of Section 10(1). *Atkin L.J. in Remington v. Larchin*. applied this test in construing the Act of 1915 (p. 411). He said:

the words in the section "a person shall not in consideration of grant, renewal or continuance of any tenancy of a dwelling house require the payment of fine or premium in addition to rent" clearly refer to the landlord; the section goes on to provide that the amount shall be recoverable by the tenant by whom it was paid from the landlord and therefore it was plain what was meant by the use of the words in that Act.

18. They meant a payment of a sum to the landlord in consideration of the grant by him. That is the exact position with us. Section 10(1) refers to any person and Section 10(2) refers to landlord. Therefore the words "any person" must be understood as referring to landlord as defined in the Act which includes the present accused, We have already pointed out that even on the strict wording of Section 8(1) of the English Act the learned Judges did not find it unreasonable to hold that the section included a third person, even though he had no power to grant or renew the tenancy, and after considerable hesitation they ultimately decided that the section referred to the grant, renewal, or continuance by him though these words did not occur in the statute and thus confined its operation to a "landlord." There would be much less difficulty in the case of the Bombay Act in giving the word "any person" its natural meaning or at least in construing it as referring to "landlord" as defined in the Act. We therefore hold that the expression "any person" in Section 10(1) would include a person like the applicant who comes within the definition of the expression "landlord."

19. There is moreover another principle which must guide the Courts in interpreting the statutes. It is the duty of a Court to attempt to find the intention of the legislature and to give effect to that intention. The more literal construction ought not to prevail if it is opposed to the intention of the legislature as apparent from the statute, and if the words are sufficiently flexible to admit of some other construction by which that intention will be better effectuated; *Govind v. Shrinivas* (1936) 39 Bom. L.R. 548 . The obvious intention of the legislature is to make the receiving of puggree an offence. Very few owners receive the amount directly and it cannot be the intention of the legislature to punish only such owners who directly receive the puggree. The intention appears

to be to punish all those persons who receive the premium and who are included in the definition of "landlord" irrespective of the fact whether they are competent to grant, renew or continue the tenancy, and it has been pointed out by their Lordships in construing Section 8(1) of the English Act that the section was capable of this wider interpretation also, We are inclined to accept this wider interpretation which is in consonance with this principle. We, therefore, hold that the expression "any person" would include person like the applicant who comes within the definition of the expression "landlord." We, therefore, affirm the conviction and the sentence. No doubt rule had been issued at the time of the admission of this application for the enhancement of the sentence. But we think that the sentence of simple imprisonment for six months is quite adequate and we see no reason to enhance the sentence. The rule is discharged.