

(1952) 02 AHC CK 0001
In the Allahabad High Court
Case No : Criminal Revision No. 1071 of 1950

G.B. Mathur and Others

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-02-1952

Acts Referred:

Uttar Pradesh Entertainments and Betting Tax Act, 1937 — Section 2(7), 5(3)

Citation : AIR 1952 All 835

Hon'ble Judges : Raghubar Dayal, J;Agarwala, J

Bench : Division Bench

Advocate : Gopal Behari, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Raghubar Dayal, J.—The applicants, G.B. Mathur and G.C. Mathur, manager and gatekeeper respectively of the Novelty Talkies, Saharanpur, were convicted of an offence u/s 5 Sub-section (3), Entertainments and Betting Tax Act (Act VIII [8] of 1937) as amended by the U. P. Entertainment and Betting Tax (Amendment) Act, XXXI [81] of 1948, for having admitted to the Novelty Talkies, a place of entertainment, three persons without payment of the tax leviable u/s 3 of the Act and to pay which they were liable. Section 5 is:

"(1) No person liable to pay entertainment tax shall enter or obtain admission to any entertainment without payment of the tax leviable u/s 3.

(2) Any person who enters or obtains admission to an entertainment in contravention of the provisions of Sub-section (1) shall, on conviction before a Magistrate be liable to pay a fine not exceeding two hundred rupees and shall in addition be liable to pay the tax which would have been paid by him.

(3) If any person liable to pay entertainment tax is admitted to a place of entertainment without payment of the tax leviable u/s 3, the proprietor of the entertainment to which such person is admitted shall, on conviction before a Magistrate, be liable in respect of every such contravention to a fine not

exceeding Rs. 500."

2. Mr. Bhatt, Assistant Commissioner, Entertainment and Betting Tax, U. P. paid a surprise visit to this Talkies on the evening of 21-2-1949 prior to the actual commencement of the film advertised for show that evening but during the exhibition of advertisement slides and found three persons without tickets or entertainment tax tickets. During his presence three passes were torn from the relevant pass-book. Mr. Bhatt deposed at first that booking had finished and probably intended to convey that no entertainment tax had been paid and was expected to be paid with respect to the entry of these three persons. But in cross-examination he made statements throwing doubt on the statement of fact that booking had closed and that no payment was made or was expected to be made on account of the entertainment tax. The learned Magistrate trying the case, however, did not hold that the booking had closed. In fact, his finding is to the effect that either these persons had paid the entertainment tax or such tax was to be paid on their behalf by the proprietor and that the manager was a bit careless and was not prompt in issuing the necessary passes. The persons concerned were not prosecuted, a circumstance indicating that possibly it was presumed by the prosecution that they had committed no offence u/s 5 Sub-section (2) of the Act which makes it criminal on the part of a person liable to pay tax to enter or obtain admission without payment of the tax. In these circumstances there is no recorded finding, and no such finding is possible to be recorded, that those persons had entered the cinema hall without payment of the entertainment tax. In the absence of such a finding no offence is made out u/s 5 Sub-section (3) of the Act as one of the main ingredients of the offence is that the entry should have been without payment of the tax.

3. We are further of opinion that no entertainment can be said to be in progress during the exhibition of advertisement slides and that therefore it cannot be said that these persons had entered or obtained admission to an entertainment without payment of tax. According to Section 2, Clause (3) "entertainment" includes any exhibition, performance, amusement, game or sport to which the persons are admitted after payment. No payment is usually demanded or charged for one's having a look at an exhibition of entertainment slides. Charges are made for the main show advertised to be shown. The checking took place in this case during the show of the advertisement slides and therefore it was premature for the purpose of checking whether the persons had been admitted to the entertainment without the payment of the necessary tax. It was open to the persons to leave the cinema hall before the actual show started. In this case the passes were torn off prior to the starting of the main show. In this view of the matter no contravention of Section 5 Sub-section (3) of the Act is made out against the applicants.

4. In view of the above finding it is not necessary to record any finding on the question whether the gate-keeper comes within the definition of the word "proprietor" in Section 2 Clause (7) of the Act which provides:

""Proprietor" in relation to any entertainment includes any person responsible for management thereof."

We may, however, say that we are of opinion that a gate-keeper, whose sole function is to allow persons inside the hall and who has no control over the show, is not a person contemplated by the word "proprietor" in this Act as he cannot be said to be responsible for management of the entertainment.

5. We therefore, allow this application, set aside the conviction of the applicants u/s 5 Sub-section (3) of the Act and order that the fine, if paid, be refunded.