

(1955) 09 AP CK 0006
In the Andhra Pradesh High Court

Hindoji Kasturichand and Another

APPELLANT

Vs

State of Andhra

RESPONDENT

Date of Decision : 08-09-1955

Acts Referred:

Motor Vehicles Act, 1988 — Section 42, 6

Citation : AIR 1956 AP 100 : (1956) CriLJ 575

Hon'ble Judges : Chandra Reddy, J

Bench : Single Bench

Judgement

Chandra Reddy, J.—The petitioners have been convicted under Rule 29(1) read with Rule 53 of the rules framed under the Madras Entertainments Tax Act, 1939 and sentenced to a fine of Rs. 45/-. Petitioner 1 is the proprietor and petitioner 2 is the manager of Mahavir Talkies at Tirupati. The case against them is this:

2. On the night of 24-3-1954 the Deputy Commercial Tax Officer (P. W. 5), Assistant Commercial Tax Officer (P. W. 2) along with P. W. 1 and a clerk and peon of P. W. 1's Office visited the cinema house to check it when the second show was on. They entered the floor section of the auditorium and on inspection found about 39 persons without tickets, This has formed the basis of the charge under the rules mentioned above.

The Additional 1st Class Magistrate who tried the case accepting the evidence of P. Ws 1, 2 and 5 that there were a number of persons without; tickets in the hall found the two accused guilty as stated above. The aggrieved accused have filed this revision petition.

3. The propriety of the conviction is canvassed in this revision petition on various grounds. It was urged that the trial Court, having found that the relations between the accused and the Assistant Commercial Tax Officer were far from being cordial, ought to have relied on the evidence of the witnesses especially when two previous attempts of P. W. 2 to get them convicted for similar offences have proved abortive.

I do not find any reason either to discredit these respectable witnesses or to disagree with the appreciation of their evidence by the trial Court. What follows is that on the day when the theatre was inspected there were some persons in the floor section without tickets.

4. Alternatively, it was contended that the Additional First Class Magistrate had no jurisdiction to entertain the complaint as the offence is one punishable with fine and could therefore be tried by any Second Class Magistrate. According to him, every criminal case should be first filed in the lowest Court of competent jurisdiction and in this case it is the 2nd class Magistrate of Tirupati that could only take cognizance of this case.

I find myself unable to agree with this proposition. There is no provision in the Criminal Procedure Code which bars the trial of a case by a superior Magistrate notwithstanding that it is competent for a Magistrate of the lowest grade to entertain the case. This argument, therefore, cannot prevail and has to be rejected.

5. On the finding of the Magistrate, could it be said that the petitioners have violated the provisions of Rule 29(1) of the relevant rules and are therefore punishable under Rule 53 which is the penal rule. Rule 29 runs thus:

The proprietor shall not admit or cause or permit to be admitted to the entertainment any person without a ticket unless a person is the holder of a pass entitling him to be admitted without payment and clearly marked "free".

6. In the present case, it is seen that it is only admission or the permission to admit that is prohibited under this rule. It is not the mere presence of ticketless spectators that is made the gravies of the offence of violation of this rule. In my opinion, the expression "admit or cause or permit to be admitted" carries with it the meaning of voluntary act on the part of the persons charged with the duty under that rule.

It connotes a violation of the proprietor of the cinema house which means that the entrance into the hall is with the knowledge or consent of the person responsible therefor. The word "admit" means to allow to enter. The meaning of this word as given in Webster's New International Dictionary is "to suffer to enter, to grant" etc.

The word "permit" has the same meaning. It is significant that the language is "shall not admit or cause or permit to be admitted". This, in my opinion, implies either the proprietor himself should allow people to gain entrance into the hall or make other people give them admission into the house. It looks to me that the rules contemplate a definite act on the part of the proprietor. This conclusion of mine is not only fortified by the frame of the rule but by decided cases.

7. Construing an analogous provision in the Forest Act, Section 21 (d) which makes "inter alia" permitting the cattle to trespass an offence, Collins C.J. and Wilkinson J. in - "Queen Empress v. Krishtayyan" 15 Mad 156 (A) expressed the

opinion that to sustain a conviction under that section it should be shown that the person accused of the crime¹ had either pastured the cattle or permitted them to trespass in the reserved forests and that the owner of the cattle could not be held liable unless some overt act was established against him.

Dealing with the same provision of law another Bench of the Madras High Court in *In Re: Kammaboyina Ramadas*, demurred to the proposition regarding the overt act to be proved against the owner of the cattle. At the same time, the learned Judges decided that mere find-tog of cattle grazing within the forest would not by itself make the owner liable to be punished under that section. Something more than that is necessary to bring the owner within the mischief of that rule such as by showing that the owner knowing that the cattle could trespass into the forest reserve neglects to take proper care of them or knowing that his servant would drive the cattle to the reserved forests neglects to take proper care of the cattle or forbids the servant from doing it or connives at it in some manner.

8. A similar expression in Section 42(2), Motor Vehicles Act fell to be construed by Horwill J. in *In Re: A. Abdul Salaam Rowther, (C)*. Section 42(2) of that Act prohibited among other things the owner of a vehicle permitting its use by his driver in a public place except in accordance with the provisions of the permit. The learned Judge held that the word "permit" means that the person actually and knowingly allows the thing to be done and that mere negligence on the part of the owner such as not locking up the vehicle so as "to prevent the driver from taking it out would not amount to permitting it to be used.

9. To the same effect is the ruling of Mukherji J. in *Indra Mohan Roy Vs. Emperor, .* There the owner of a motor-bus which was driven on a certain day by a person who had no licence to drive was charged for that offence. The liability of the owner was said to arise u/s 6 of the relevant Act which provided that no owner shall allow any person who was not licensed to drive it. The learned Judge was of the view that unless the driving of the vehicle by an unlicensed driver was with the knowledge of the owner the conviction could not be sustained.

10. A bench of the Bombay High Court in *Shantaram v. Emperor* AIR 1932 Bom 474 (E) had to consider the applicability of Section 6, Motor Vehicles Act, 8 of 1914, to a case where a driver drove the car beyond the limits of the licence. The owner of the car also was charged with the same offence. The learned Judges upheld the contention of the owner that the words "no owner of a motor vehicle shall allow any person" etc., indicate that there should be either express permission or facts from which the Court can infer implied permission on the part of the owner, The learned Judges remarked that the word "allow" ordinarily involved permission express or implied and it was used in that sense in Section 6 of the Act.

11. The view taken by me accords also with the dictum of Mathews J. in *Somerset v. Wade* (1894) 1 QB 574 (F) It was decided there that a licensed

person could not be convicted u/s 13 of the Licensing Act, 1872 of permitting drunkenness to take place on his premises where the evidence shows that a person who was on the premises was in fact drunk, but the licensee did not know that such person was drunk.

It was observed by Mathews J. that the expression "suffers" used in Section 17 of the Act was not distinguishable from the word "Permits" in Section 13 of that Act. The other learned Judge Collins J. quotes the remarks of Coleridge C.J. in *Somerset v. Hart* (1884) 12 QBD 360 (G).

How can a man suffer a thing to be done when he does not know of it? It is true that a man may put another in his position so as to represent him for the purpose of knowledge.

These observations, are quite pertinent to the present enquiry. As pointed out by Mathews J. in the same case the word "suffer" has the same meaning as the word "permit."

12. The learned Public Prosecutor argues that since there is an absolute prohibition in regard to the presence of ticketless spectators in the theatre, the proprietor's liability under the rule arises whether he could be imputed with knowledge or not and the question of Mens Real does not arise. The foundation for this argument is *Emperor v. Amrutlal* AIR 1945 Nag 263 (H) There a reference was made by a Sessions Judge recommending that the conviction of three accused under the Motor Vehicles Act should be set aside. The manager, driver and conductor of a stage-carriage were convicted for violation of certain rules under the Act. So far as the manager was concerned, the basis of the recommendation was that he was not the owner within the ambit of Section 42(1). This was negated on the ground that the manager was one of the owners and would therefore come within the purview of Section 42(1).

The learned Judge also negated the contention that he provided an agent to sell tickets and that he was not responsible for the agent's failure to carry out his duty, remarking that since he was responsible for seeing that the conditions of the permit were carried out he could not escape liability if the employees failed to carry out their duty diligently. I do not think this furnishes any analogy in the present enquiry.

In my opinion Rule 29 provides for liability only for permitting and causing a certain thing and it contemplates a case where the act was done with his knowledge or assent express or implied. It is only in cases of absolute prohibition that the rule of enforcing liability against the owner would arise. AIR 1945 Nag 263 (H) is an illustration for this.

13. To my mind it is clear that the principle enunciated in the afore-cited cases applies to Rule 29 and the rules framed under the Madras Entertainments Tax Act. My considered opinion is that the words "admit" and "permit" are used in the rule in the ordinary sense and to make the proprietor of a theatre responsible for

the presence of ticketless spectators in the cinema house it is essential to prove that he had willingly or knowingly allowed them to get into it or that he was a privy to it.

Whether it is the rule stated in *Queen Empress v. Krishtayyan* (A) or that in *In re Ramdas* (B) that governs the case I think the petitioners cannot come within the operation of Rule 29 (1). If there is no infringement of this rule, Rule 53 which creates the offence cannot come into play because it has not been shown or found by the Magistrate that the petitioners have been guilty of negligence in any respect.

The learned Magistrate has not considered this aspect of the matter and so it has to be remitted to the lower Court for a rehearing of the case. But having regard to the fact that more than a year has elapsed and in view of the trivial nature of the offence, I do not consider it necessary to adopt this course.

14. The result is: the revision case is allowed and the petitioners are acquitted. The fines, if paid, will be refunded.