

**(1961) 02 MP CK 0012**  
**In the Madhya Pradesh High Court**  
**Case No : Criminal R. No. 458 of 1956**

Rambharose Awasthi and Others

APPELLANT

Vs

State

RESPONDENT

**Date of Decision :** 08-02-1961

**Acts Referred:**

Central Provinces and Berar Entertainments Duty Act, 1936 — Section 4, 4A, 5

**Citation :** (1961) ILR (MP) 919 : (1961) JLJ 799 : (1961) MPLJ 616

**Hon'ble Judges :** T.C. Shrivastava, J

**Bench :** Single Bench

**Advocate :** R.K. Tankha, for the Appellant; M.P. Shrivastava, for the Respondent

## **Judgement**

T.C. Shrivastava, J.

This order governs the disposal of Criminal Revision No. 458 of 1960 and Criminal Revision No. 459 of 1960 in which the applicants have been convicted u/s 5, read with sections 4 and 4-A of the C.P. and Berar Entertainments Duty Act, 1936 (No. XXX of 1936)-hereinafter referred to as the Act-and have been sentenced to pay a fine of Rs. 25 each in the first case and Rs. 50 in the second case.

The facts of the case leading to Criminal Revision No. 458 of 1960 are that the applicants 1 to 3 and 5 are the proprietors of Shanker Talkies in Rewa and the applicant No. 4 Gulam Mohammad Khan is the manager of the said talkies. On 10-3-1958, Excise Sub-Inspector Gule Sattar (P.W. 2) made a surprise check and found that nine persons were admitted on a complimentary pass issued by the manager and two children were admitted to the students' class on a chit issued by Gopaldas. No entertainment duty was paid for the entry of these persons as required by section 4 of the Act and therefore all the applicants (proprietors and manager) were charged for having contravened the said provisions and were found guilty u/s 5. A petition for revision was preferred before the Sessions Judge, Rewa, who rejected it. The applicants, therefore, have come up to the

High Court in revision.

The second case arises under similar circumstances. The date of offence in that case is 6-5-1958. The first four applicants are the proprietors of the same Shanker Talkies. Applicant No. 6 Surajpal Singh was the manager on the relevant date. On checking, 25 persons were found without tickets in the students concession class and 5 persons in the second class. For all these persons no entertainment duty had been paid. The proprietors and the manager were prosecuted and convicted u/s 6 of the Act by the Magistrate and a revision petition before the Sessions Judge, Rewa, failed.

Several grounds have been stated in the petition for revision; but Shri R.K. Tankha for the applicants raised only one law point in support of the petition before me. His contention is that the proprietors are not liable for an offence u/s 5, read with section 4-A, of the Act, unless they have knowledge of the admission of the persons without tickets or have connived at such admission being made. This contention was raised before the Sessions Judge also; but the learned Sessions Judge rejected it observing that the liability of the proprietor u/s 4-A of the Act is absolute and he is therefore liable to be convicted irrespective of the fact whether he knows about the admission of persons without payment of entertainment duty or whether he is responsible for such admission.

Section 4-A of the Act runs as follows:

No proprietor shall admit any person to an entertainment without payment for admission thereto or at concession rates unless the entertainments duty payable in respect thereof on the full value of the ticket for the class to which such person is admitted has been paid.

Section 5 is as follows:

If any person is admitted for payment to any entertainment in contravention of sub-section (1) of section 4 or section 4-A the proprietor of the entertainment to which such person has been admitted shall be guilty of an offence under this Act.....

I may also quote the definition of "proprietor" as appearing in section 2(f) of the Act:

"proprietor", in relation to any entertainment, includes any person responsible for or for the time being in charge of the management thereof.

The question is whether the liability created on the proprietor u/s 5, read with section 4-A, is absolute and does not depend upon his being responsible for the admission of any person without payment of the necessary entertainment duty. The following passage occurs in Maxwell on Statutes (Tenth Edition), page 99:

As mens rea, or a guilty mind, is, with some exceptions, an essential element in constituting a breach of the criminal law, a statute, however comprehensive and unqualified it be in its language, is usually understood as silently requiring that

this element should be imported into it, unless a contrary intention be expressed or implied. "The general rule of law is, that no crime can be committed unless there is mens rea".

Later, on page 105 the exceptions are indicated in the following passage:

At the present time there is a large body of municipal law which has been framed in such terms as to make an act criminal without any mens rea.

This observation is followed by several examples; for instance, a passenger may be compelled to show his ticket even though he has no intent to defraud; byelaws imposing regulations in the interest of the health or convenience of the public are generally so conceived and the mere breach of them is sufficient to constitute an offence; the sale of an article of food or a drug not of the nature, substance and quality of the article demanded, is to the prejudice of the purchaser and is an offence, though the seller is unaware of the fact. Thus, it is possible to provide in a statute for the criminal liability of persons without any guilty mind when this is considered necessary in the interest of the general public; but the language of the statute must be very clear to indicate this.

The question of the liability of a master for the acts of his servant without knowledge of the acts was considered in the context of the Motor Spirit Rationing Order, 1941, by the Supreme Court in Hariprasada Rao v. The State AIR 1951 SC 204. The following passage from the decision in Srinivas Mall v. King-Emperor AIR 1947 PC 135 was quoted as laying down the correct law:

With due respect to the High Court their Lordships think it necessary to express their dissent from this view. They see no ground for saying that offences against those of the Defence of India Rules here in question are within the limited and exceptional class of offences which can be held to be committed without a guilty mind. See the Judgment of Wright J. in Sherras v. De Ratzon (1895) 1 QB 918 at p. 921=64 LJMC 218. Offences which are within that clause are usually of a comparatively minor character, and it would be a surprising result of this delegated legislation if a person who was morally innocent of blame could be held vicariously liable for a servant's crime and so punishable "with imprisonment for a term which may extend to three years". Their Lordships agree with the view which was recently expressed by the Lord Chief Justice of England, when he said: "It is in my opinion of the utmost importance for the protection of the liberty of the subject that a Court should always bear in mind that, unless the statute, either clearly or by necessary implication rules out mens rea as a constituent part of a crime, a defendant should not be found guilty of an offence against the criminal law unless he has got a guilty mind. [Brend v. Wood (1946) 110 JP 317 at p. 318=175 LT 306]".

It is, therefore, necessary to see whether sections 4-A and 5 of the Entertainments Duty Act impose an absolute liability on the master for admissions without payment of entertainment duty. These sections have been already quoted by me above. The learned Sessions Judge relied upon the

definition of "proprietor" to support his conclusion against the applicants. The definition of "proprietor" is inclusive and includes the manager or any person responsible for the management within the expression "proprietor". The effect of this is only to impose upon the manager liability in cases where the proprietor becomes liable. The contention that the liability of the proprietor must be held to be absolute on this ground is erroneous. Turning to section 4-A of the Act we find the opening words to be "No proprietor shall admit any person". The prohibition against the proprietor is against a conscious act of admission, as the active voice of the draft clearly shows. We may contrast the opening words of section 4 which are in the passive voice: "no person shall be admitted for payment etc." Under this section the liability of the proprietor may be absolute; but it is not so u/s 4-A. Section 4 deals with persons admitted on payment of admission charges but without paying entertainment duty, and section 4-A deals with persons entering without payment for admission or at concession rates. It is the latter section which is relevant for our purposes and to attract this latter section it is necessary that the proprietor must be consciously responsible for the admission of the person contrary to law. No violation of section 4-A can, therefore, be committed unless the proprietor in default admits or connives at the admission of a person without payment, and consequently there can be no conviction u/s 5 in such cases. There is nothing in the language of section 4-A to indicate that the liability of the proprietor is absolute. The general rule that a crime cannot be committed without a guilty mind must, therefore, apply to the provisions of section 4-A of the Act.

Shri Tankha for the applicants has rightly conceded that the manager in both the cases would be liable for admitting persons without payment contrary to the provisions in section 4-A. The proprietors who have not been shown in any way concerned with the admission will not be so liable.

In the first case, there is evidence that Gopaldas applicant, who is a proprietor, had himself issued a chit for the admission of two students without any tickets and without any payment of entertainment duty. In that case, Gopaldas was directly responsible for the admission of the two students and I agree with the learned Sessions Judge that the contention that the proprietor intended the admission to be made only after payment of entertainment duty is without any substance.

In the result, I pass the following orders in the two cases:

(i) Criminal Revision No. 458 of 1960: The conviction of the applicants Rambharose, Sumamal and Gurumukhdas as also the sentence of fine against them are set aside. Fine, if paid, shall be refunded to them. The conviction and sentence against Gopaldas and Gulam Mohammad Khan is maintained.

(ii) Criminal Revision No. 459 of 1960: The conviction of the applicants Rambharose, Sumamal, Gurumukh and Gopaldas is set aside as also the sentence of fine awarded against them. Fine, if paid, shall be refunded. The

conviction and sentence against Surajpal Singh is maintained.