

Emperor Vs. Ibrahim Iboo

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Court : Mumbai

Decided On : Mar-30-1944

Reported in : AIR1945Bom65; (1944)46BOMLR564

Judge : Divatia and ;Lokur, JJ.

Appeal No. : Criminal Application for Revision No. 64 of 1944

Appellant : Emperor

Respondent : ibrahim Iboo

Disposition : Application allowed

Judgement :

Divatia, J.

1. This is an application for revision by the accused who has been convicted of the offence of lying or loitering in a street, being a reputed thief and without being able to give a satisfactory account of himself under Section 112 (d) of the City of Bombay Police Act, 1902. The facts are shortly these : On the night of December 27, 1942, the police were waiting near Lal Baug, Parel, for making an Abkari raid. While they were so waiting, a taxi came there with tins of illicit liquor at about 4 a.m. The occupants of the taxi threw away three or four tins of liquor on the road and then ran away in the taxi. Then the taxi came back at about 4-15 a.m. and the

accused who was accompanying the driver got down from the car and was about to pick up the tins when he was arrested. He was charged at first with being in possession of illicit liquor under the Bombay Abkari Act, but was acquitted after a trial on September 7, 1943. While the trial was pending, he was re-arrested on April 14, 1943, for being found loitering at about 4 a.m. on December 27, 1942, and he was tried for this offence before the Honorary Magistrate at Dadar.

2. The only evidence against the accused consisted of two witnesses who are police constables. The first constable deposed to the facts I have stated above. The other constable deposed that he went after the accused had already been arrested. The accused's case was that he had gone to the Mahim fair on the night in question and had come in a Victoria at the site at about 5 a.m. There was a man with him with his family. He admitted twelve previous convictions but contended that he was not loitering on the night in question. The learned Magistrate held on this evidence that the charge against the accused was proved and convicted him of the offence under Section 112(d) and sentenced him to one month's rigorous imprisonment. This revisional application has been preferred against that conviction,'

3. Mr. Jahagirdar for the petitioner has contended that the police constable has deposed that the offence took place on December 27, 1943, but that the charge mentions December 27, 1942, and therefore there is no evidence to support the charge. But there is no substance in that contention. In the original deposition the period is 1942 and not 1943. There seems to be a mistake in the certified copy supplied to the accused. The second contention is that the accused could not be charged with and convicted of another offence after he was charged with and acquitted of an offence on the same facts, and he relied upon the decision in *Manhari Chowdhuri v. Emperor*¹. In our opinion, however, that decision has no application to the facts of this case, The present case comes under Sub-section (2) of Section 403 of the Criminal Procedure Code which says that a person acquitted or convicted of any offence may be afterwards tried for any distinct offence for which a separate charge might have been made against him in the former trial under Section 235, Sub-section (2). This case undoubtedly falls under Section 235, Sub-section (1), and therefore, as held by this Court in *In re*

Ochhavlal Bhikhabhai,² it is open to the prosecution to charge a person with one of the offences and subsequently to charge him with another, although both of them formed part of one and the same transaction. The contention, therefore, fails.

4. But we think that the last argument urged by Mr. Jahagirdar is correct and must be accepted, and that is that the evidence does not show that the accused was found lying or loitering in a street, yard or any other place. The evidence only shows that the accused came along with another person in a taxi, got down, from it and was about to pick up a tin when he was arrested. That shows some quick action on his part rather than loitering. The word 'loiter' has not been defined, but in the Supplement to Stroud's Judicial Dictionary at p. 550 it is stated, in connection with a municipal offence, that to 'loiter' with a vehicle in the street, contrary to a municipal bye law, connotes something in the nature of stopping to chat with other drivers, gossiping, or idling; merely driving a char-a-banc slowly backwards and forwards to pick up passengers is not 'loitering', especially if there be no obstruction to the traffic. It is quite clear to us that the word 'loitering' is used in Section 112 of the City of Bombay Police Act in a sense which implies lingering or hanging about on a road. As I said before, instead of lingering or hanging about, the accused quickly alighted from the taxi and tried to pick up a tin. In no sense, therefore, can the accused be said to be loitering, and he cannot, therefore, be convicted of the offence under Section 112 (d) of the City of Bombay Police Act.

5. For these reasons we make the rule absolute, set aside the conviction and sentence and direct that the accused be acquitted and discharged. The bail bond is cancelled.