

**Reg Vs. Bhista BIn Madanna**

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**SooperKanoon Citation :** [sooperkanoon.com/330225](http://sooperkanoon.com/330225)

**Court :** Mumbai

**Decided On :** Aug-21-1876

**Reported in :** (1877)ILR1Bom308

**Judge :** Michael Westropp, C.J., ;Melvill, ;Kemball and ;Nanabhai Haridas, JJ.

**Appellant :** Reg

**Respondent :** Bhista BIn Madanna

**Judgement :**

**Melvill, J.**

1. The question referred for the decision of the Full Court is whether a sentence of fine only, or of imprisonment only, under Clause 6, Section 32 of Act XXXI of 1860, is a legal sentence.
2. The clause in question enacts that every person who commits the offence thereby made punishable 'shall be liable to be imprisoned, with or without hard labour, for a term not exceeding two years, and also to a fine not exceeding one thousand rupees.' The ordinary meaning of this phraseology would certainly be that the offender may be punished with imprisonment, or fine, or both.
3. The difficulty of assigning to the words their natural interpretation arises from the circumstance that in other sections of the same Act (viz., 5, 15, 23, and 34) the

Legislature has declared that persons who commit certain offences are 'liable to fine, or imprisonment, or to both fine and imprisonment,' and it may reasonably be argued that, if the Legislature had intended that offences under Section 32 should be punishable in the same way, it would have employed the same terms.

4. We admit the difficulty; but we think that there is, at least, an equal difficulty in putting upon the words quoted from Section 32 any other than their natural construction.

5. Only two other constructions are possible. The words may mean either that the offender (in the language of the Indian Penal Code) shall be punished with imprisonment, and shall also be liable to fine, or that the punishment must combine both imprisonment and fine.

6. The first of these constructions (which has been adopted in certain cases by a Division Bench of this Court) involves the anomaly of putting upon the word 'liable' two widely different interpretations when applying it to the two branches of the same sentence. The law says (for the amplification of the section does not alter its meaning), that the offender 'shall be liable to imprisonment, and shall also be liable to fine.' It seems to us contrary to all rules, grammatical and legal, to hold that these words mean that the offender must be punished with imprisonment, and may be punished with fine.

7. The second construction is equivalent to substituting the word 'punished' for the word 'liable.' If this be done in one section, it must be done throughout the Act; and then we are immediately brought into collision with the same difficulty which met us at the outset, that is, the difficulty of supposing that the Legislature would use different terms, in different sections of the same Act, to denote precisely the same thing. For if 'liable' is equivalent to 'punished,' then Section 2 of the Act, which says that an offender 'shall be liable to a fine and to imprisonment' means that he must be punished with both fine and imprisonment; and this might just as well have been expressed by using the terms of Section 32, 'shall be liable to imprisonment, and also to fine.' It is impossible to escape from this difficulty except by concluding, either that the substitution of 'punished' for 'liable' does not furnish the true construction, or else by concluding that no argument can be founded upon a

comparison of the phraseology used in different sections of the Act. Whichever of these two conclusions we adopt we are equally justified in putting upon the terms of Section 32 their ordinary natural construction.

8. The truth appears to us to be (and we cannot give a satisfactory judgment on the question referred to us without saying so) that Act XXXI of 1860 has either been most carelessly drafted, or else different sections have been drafted by different hands, and no attempt has been made to bring them into harmony. The person who drafted Section 36 must, when he inserted the words 'except as aforesaid,' have supposed that there was something in the preceding sections of the Act relating to the venue of offences. There is really nothing of the kind. The person who drafted Section 40 of the Act must have supposed that some offences under the Act are punishable with imprisonment only. No offence is so punishable. The person who drafted Sections 23 and 40 of the Act would (it may be supposed) have used the term 'liable upon conviction.' instead of the single word 'liable' in other sections of the Act, and would not have left room for the suggestion (which, however absurd in itself, is logically sustainable, if there is anything in the argument drawn from incongruity of expressions) that offences other than those mentioned in Section 23 are punishable without any conviction at all. The difference between the words 'liable to be imprisoned' in Section 32 and 'liable to imprisonment' in the other sections of the Act, however trivial that difference may be, indicates that Section 32 was drafted by a different hand from that to which we are indebted for the other portions of the statute.

9. For these reasons we think that we ought not to attach much weight to the only argument which is adverse to the natural construction of Section 32, viz., the argument drawn from the use of a different phraseology, to express the same thing, in other sections of the Act. On the other hand, we feel bound to construe a penal statute, when its language is ambiguous, in the manner most favourable to the liberties of the subject, and this is more especially so when the penal enactment is of an exceptional character. Our answer to the question referred to us will, therefore, be that a sentence of fine only, or of imprisonment only, under Clause 6, Section 32 of Act XXXI of 1860, is a legal sentence.

