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**SooperKanoon Citation :** [sooperkanoon.com/350646](http://sooperkanoon.com/350646)

**Court :** Mumbai

**Decided On :** Jul-10-1919

**Reported in :** AIR1919Bom138; 52Ind.Cas.593

**Judge :** Shah and ;Hayward, JJ.

**Appellant :** Kordia Gopal Katkari and ors.

**Respondent :** Emperor

**Judgement :**

**Shah, J.**

1. This is an application against an order made by the Resident Magistrate of Bandra under Act XIII of 1859. The contracts in question are between certain Kathodis' and the complainant. The contracts relate to the work to be done as charcoal burners from the 1st of September 1918 to the 15th of June 1919. They refer to certain small advances in cash, and the rate of wages is fixed at 2 annas per bag of charcoal. They also provide that the wages should be set off against the sums advanced and to be advanced to the workmen.

2. It has been found by the Magistrate that a Katkari, if he is a good and hardworking workman, manufactures with the assistance of others and his family about 300 bags of charcoal in a season of 10 months. His earnings, therefore, at 2 annas a bag would come to Rs. 37-8-0.' In plain terms, the result of this contract,

according to the finding, is that when a workman with his whole family works for (1) months, he earns Rs. 37-8-0, that is, he earns nearly Rs. 4 per mensem. It is admitted by the complainant in his evidence that the wife and children of the Katkaris work with the Kathodi, that they are not paid separate wages for their work and that their labour is also included in the rate. It is also admitted by him that, though he feeds them, he could charge them for the same and would do so in case the workmen did not return to work for the following season. Taking the terms of the contract as stated in the document, with the finding of the Magistrate and the facts admitted by the complainant, I am wholly unable to accept his conclusion that the conditions of the contract are fair and reasonable. It is suggested before us that these workmen get some further remuneration under some other arrangement or contract. But there is no evidence in support of this suggestion. The fairness of the contracts must be determined on the evidence on the record; and it is hardly possible to treat these contracts, under the circumstances established, to be fair or reasonable. The workmen refused to work though they received the advances; and the question is, whether, under the circumstances, it is established that they had no lawful or reasonable excuse to neglect or refuse to perform the 'work as contemplated by the Act. Having regard to the terms of the contract, it seems to me that it cannot be said that the workmen had no lawful or reasonable excuse to refuse to work. The learned Magistrate has referred to some other facts which go to show that the complainant treats his workmen with a certain degree of consideration. But it appears from his evidence that the consideration he shows to the workmen means an addition to the legal dues recoverable from them. No doubt it claimed that if these persons would return to work for the next season, he would not charge them the dues of the preceding season. But that is a matter of concession on his part and not of any right of the workmen under the contract. I do not think that, on such considerations, the terms of a contract which may not be otherwise fair, can be treated as fair for the purpose of determining whether the workmen had a lawful or reasonable excuse to refuse to work. There is no question on the present proceedings of the civil liability of these workmen for the moneys received or for breach of contract. But all breaches of contract are not within the scope of the Act; I am satisfied, on a consideration of the terms of the contract and the other circumstances which are

not in dispute, that in the present case the omission on the part of the workmen to perform the work did not render them liable to be dealt with under Act XIII of 1859.

3. I would, therefore, make the Rule absolute and set aside the order of the Magistrate.

4. The same order in the other companion applications Nos. 126 and 127 of 1919.

**Hayward, J.**

5. I concur that the order should be set aside as proposed by my learned brother.

6. The charcoal burners entered into this contract with the contractor,--'I bind myself to work for a season from 1st September 1918 to 15th of June 1919. Therefore, you have paid me at my request in advance cash Rs. 14. I bind myself to work for you till the amount is paid. The conditions of payment of your money, which is to be paid off by working, are that for my personal labour in preparing charcoal account will be made at the rate of 2 annas per bag. The money should be set off against the sum advanced. In case more money is taken by me as an advance in respect of my wages I bind myself to work under you till that amount is paid off. Till all your money is paid off as above I bind myself to work under you. If owing to any cause I give up your work and go away, you are fully empowered to proceed against me under Act XIII of 1859.' The charcoal burners--it has been calculated and not disputed would under this contract earn Rs. 37-8-0 by 10 months work with the aid of their families--whereas they would have to spend during the same period about Rs. 225 for their own support and that of their families. The contractor has been said to have made special arrangements for providing them with food and, unfortunately also, with drink. But it would appear that the expenses of these items have all been scrupulously and regularly debited to their account.' He has, however, stated that the balance which would, under the arrangement, inevitably be due against them at the end of each year could be wiped off provided they returned to work with him the following year. They have had accordingly to return to work for him during the last 6 or 7 years. They have, however, on this particular occasion been tempted to break away by a better offer, and the consequence has promptly resulted which would in similar circumstances

have happened during any of the past 6 or 7 years. The balances due against them have not been wiped off and they have been directed to work as usual upon the same disadvantageous terms or in default to be sent to jail under the provisions of Act XIII of 1859.

7. The charcoal burners have been described as ignorant Kathodis'; and, again, as members of the improvident and half barbarian tribe like the Kathodi' by the learned Magistrate. The contractor, on the other hand, would appear to be a well-to do forest contractor. There could be, in my opinion, no doubt, in these circumstances, that the relations subsisting between the parties were such that one of the parties was in a position to dominate the will of the other, and there could, in my opinion, also be no doubt whatever, upon a consideration of the terms of the contract, that the transaction was unconscionable, The contractor was, therefore, bound by law to prove that the contracts were not induced by undue influence. No such proof has been pointed out to us, and the result must follow that the contracts would be liable to be avoided or broken as contracts obtained by undue influence under Sections 16, and 19A of the Indian Contract Act. If so, it could not, in my opinion, properly be said that the contracts have been broken without lawful or reasonable excuse. The charcoal burners had the lawful right to break the contracts. They could not be said, in the circumstances, to have left the contractor without reasonable excuse. They have, no doubt, been wilfully broken, but that would not be enough. They must also have been broken without lawful or reasonable excuse as provided by Section 2 of Act XIII of 1859. It is only in such circumstances that the contractor has been given a right to have recourse for the enforcement of his contracts to the Criminal Courts, and that has for a number of years been the view of Benches of this Court.