SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Netram Agarwalla Vs. the State

Netram Agarwalla Vs. the State

SooperKanoon Citation : sooperkanoon.com/872415

Court : Kolkata

Decided On : Jul-15-1955

Reported in : AIR1955Cal609,1955CriLJ1579

Judge : Debabrata Mookerjee, J.

Acts : Cinematograph Act, 1918 - Sections 3 and 8; ;Cinematograph (Amendment) Act, 1949

Appeal No. : Criminal Revn. No. 78 of 1955

Appellant : Netram Agarwalla

Respondent : The State

Advocate for Def. : Tarini Prosad Bagchi, Adv.

Advocate for Pet/Ap. : S.S. Mukherjee and ;Kishore Mukherjee, Advs.

Judgement :
ORDER

Debabrata Mookerjee, J.

1. This is a petition for revision of an order made by Sri J. M. Sarkar, Magistrate, 1st Class, Raiganj, on 25-8-1954, by which the petitioner was convicted under Section 6(1), Cinematograph Act (Act 2 of 1918) for contravention of the

provisions of Section 3 of that Act and sentenced to a fine of Rs. 100/- in default to suffer simple imprisonment for one month.

2. Against this order of conviction and sentence, an application was made to the Sessions Judge of West Dinajpur for a reference to this Court with the recommendation that the conviction of and the sentence imposed upon the petitioner her set aside. The learned judge by an order dated 16-11-1954 declined to interfere. Thereafter the petitioner applied to this Court and obtained the present Rule.

3. The case for the prosecution briefly statedis that the petitioner is the proprietor of the Mahabir Talkie House in respect of which one N. Roy Choudhury was the lessee under him. The petitioner had a permanent licence renewable annully on payment of a fee of Rs. 30/-. The last licence issued in his favour expired on 20-4-1954 but before the licence was renewed, he allowed cinema exhibitions to be held in the talkie house during the period 23rd of April to the 5th of May 1954. In these circumstances it was alleged that the petitioner had contravened the provision of Section 3, Cinematograph Act of 1918 and he thereby committed an offence punishable under Section 6(1) of that Act.

4. To this allegation the petitioner pleaded not guilty and his defence was that he had applied on 10-4-1954 for a renewal of the licence before it expired and deposited the requisite fee; that be had no knowledge that durine the period between the 23rd of April and the 5th of May 1954, shows were given at the house, and in any event, be being the proprietor be was not responsible for the shows inasmuch as the said N. Roy Choudhury was the lessee under him who was in charge of exhibition of the cinema shows; that on 4-5-1954 when he received a communication from the District Magistrate that his licence would not he renewed unless certain defects in the talkie house were remedied, be communicated that information to the Manager of Mahabir Talkies anddirected that the exhibition of films be stopped till the licence was renewed.

Further there were disputes and differences culminating in various litigations as between himself and the aforesaid N. Hoy Choudhury who instigated the present complaint although the latter being in charge of the actual exhibition of films as

lessee was responsible for giving the shows with-out a licence. In support of the case made, the petitioner examined his son as a witness to prove certain documents and to establish the fact that the petitioner was not likely to know that the films were in fact being exhibited during the period the 23rd of April to the 5th of May 1954.

5. The case against the petitioner was tried in a summary manner and the learned trying Magistrate recorded a brief order in which be found that the evidence established that the shows were given during the period in question to the knowledge of the petitioner. Upon this finding, the learned Magistrate convicted and sentenced the petitioner as stated above.

6. It is to be observed that the trying Magistrate made an initial mistake in having recorded the order of conviction and sentence under Section 6(1), Cinematograph Act. This Act underwent revision by the legislature and Sections 6 to 9 of the Cinematograph Act of 1918 were recast and amended by Act 39 of 1949 and again by Act LXII of 1949. Section 3 of the original Act has been retained but the section which under the second Amendment Act of 1949 provides for penalties is Section 8 instead of Section 6 of the old Act.

In this petition we are concerned solely with the provisions of Section 3 which has been left unamended and Section 8(1) which in substance has been retained except for the provision for penalty for infraction of rules etc. introduced by the Amendment Act LXII of 1949. That being the position, no question can possibly arise of any confusion and resultant prejudice accruing for the petitioner by reason of the change brought about by the amendment. The result therefore is that the Magistrate's order of conviction has to be read as one under Section 8(1) instead of Section 6(1) of the Act for contravention or the provisions of Section 3 of the Act.

7. At the trial the prosecution examined the Bench clerk of the District Magistrate of West Dinajpur and he gave evidence to prove that the petitioner was the proprietor/licensee of Mahabir Talkies, Raiganj, and he produced the licence which had been issued in the year 1950. This licence was apparently renewed on payment of an annual fee of Rs. 30/- and the last endorsement on it shows that it

was renewed for a period of one year as from 21-4-1953. The witness proved that no licence had been issued in favour of the petitioner after 21-4-1954, but the witness admitted in cross-examination that the petitioner had applied for renewal of the licence on 10-4-1954.

8. Evidence was also called to show that films were exhibited as a matter of fact at the Mahabir Talkies every might during the period from 23rd of April to 5th May 1954 and that the petitioner lived quite close to the Cinema hall at a distance which would not be more than 50 yards away.

9. The petitioner cross-examined the witness to show that there have been litigations going on between him and N. Roy Choudhury; that the sound emanating from a Hour machine, worked by means of dynamo, was likely to drown the sound produced by the cinematograph apparatus when in action during the show and that the petitioner being an old man was not likely to move about in order to be able to sec for himself if film shows were actually given during the period which was not covered by the licence.

10. In this state of the evidence, the learned Magistrate came to the conclusion that the petitioner was guilty of having contravened the provisions of Section 3 and consequently convicted him for having permitted the place to be used in contravention of the provisions of the Act.

11. Section 3 of the Act is in these words: 'Save as otherwise provided in this Act, no person shall give an exhibition by means of a cinematograph elsewhere than in a place licensed under this Act, or otherwise than in compliance with any conditions and restrictions imposed by such licence.'

12. Cinematograph is defined in Section 2 of that Act as including any apparatus for the representation of moving pictures or series of pictures.

13. Section 8(1) provides:

'If the owner or person in charge of a cinematograph uses the same or allows it to be used, or it the owner or occupier of any place permits that place to be used, in contravention of the provisions of this Act or the rules made thereunder, or of the

conditions and restrictions upon, or subject to which, any licence has been granted under this Act, he shall be punishable with fine which may extend to one thousand rupees, and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues, and the licence (if any) shall be liable to be revoked by the licencing authority.'

Sub-sections (2) and (3) of the section do not fall to be considered in the present context

14. Thus, Section 8(1) provides penalty for contravention of the provisions of the Act or of the rules made under it or for violation of the conditions of a licence; it also punishes a person who permits any place to be used in contravention of the provisions of the Act or the rules made thereunder.

15. The substantial question in this case is whether the petitioner as owner or proprietor of the place permitted it to he used in contravention of the provisions of this Act. The word 'place' has been defined in Section 2 and includes a house, building, tent or any description of transport whether by sea, land or air. There can therefore be no question that the owner or occupier of the place where the shows are exhibited comes within the mischief of Section 8 if the owner or occupier permits that place to be used in contravention of the provisions of the Act or any Rule made thereunder.

Section 3 of the Act is imperative and it says that no person shall give an exhibition by means of cinema to graph elsewhere than in a place licensed under this Act, Taking therefore the provisions of these two sections together it is reasonably clear that no exhibition by means of cinematograph can lawfully be given at a place unless the owner or occupier thereof possesses a valid licence.

16. Mr. Mukherjee appearing in support of the Rule has argued that in the circumstances disclosed by the evidence the question of the petitioner's guilty mind becomes the all-important question. It is argued that the petitioner did have a permanent licence, that that licence was renewed on more than one occasion and that before the expiry of the last licence issued in his favour, an application for renewal had been made.

In support of that application there was a deposit of the required amount made by the petitioner. The other circumstance upon which reliance is placed to show that the petitioner did not have the necessary guilty mind is that be is an old man and that the sound emanating from a flour mill close-by was likely to drown the sound of the cinematograph machine in the talkie house.

In these circumstances, it is argued that it is not possible to hold that the petitioner intended to violate the provisions of the Act; and in anyevent there being a reasonable expectation that the licence would in due course be issued in his favour, the circumstance was relevant in the question of intention.

17. On behalf of the State it has been contended that the question of intention is not material to the case and unless and until the licence was actually renewed in favour of the petitioner the exhibition of shows at the talkie house would make the petitioner liable.

18. The question therefore that falls to be determined is whether the provisions of the Cinematograph Act are such as to require proof of guilty mind or mere proof of infraction is sufficient for a conviction.

19. As far as I can see the Cinematograph Act, strictly speaking, is not a criminal statute; An examination of the different provisions of the Act cannot leave anybody in doubt that the real purpose of the Act is to regulate exhibition of films by means of cinematograph. The Act provides for the licencing of films, their certification, restriction of powers of the licencing authority and matters of that kind.

The penal provisions are restricted and they relate to the contravention of rules and specified provisions of the Act. Most of the provisions of the Act appear to be designed to promote and regulate public morals involved in film exhibitions, recreation, education and enlightenment. That being so, it cannot be said that the statute is really one what is ordinarily meant by a criminal statute.

It is indeed an accepted proposition that where the purpose or intendment of a statute is dominantly to provide punishment and the provisions are largely of a penal nature, the question of mens rea or guilty mind becomes a question of prime

importance; and before a person can be convicted of violation or infraction of any provision of such statute, it is essential to find that the person charged had the necessary guilty mind.

But in the case of a statute like the Cinematograph Act it seems reasonably clear that the provisions are designed to regulate exhibition by means of cinematograph and the purpose is largely recreative or educational. That being so, the prohibition in Section 3 of the Act that no person shall give an exhibition by means of cinematograph at any place other than a place licensed under this Act seems to me to be absolute and imperative.

In a case of this nature no one can be heard to say that although he did not have the] necessary licence still he did not have the guilty mind when he gave or permitted the shows without a licence. The words used in Section 3 admit of no qualification, They constitute an absolute prohibition and all that need be provided in a case where violation of Section 3 read with Section 8 is charged, is to adduce evidence that shows were in fact given and that there was in fact no licence issued for the place where such shows were permitted.

In this view, I do not think that the fact of the petitioner, having made a deposit together with an application for renewal of the licence will be available as a plea, in defence to a charge of contravention of the provisions of the Act. The mere fact that he was a licensee in respect of the talkie house or the fact that he had before the expiry of the last licence applied for its renewal or even the other fact that somebody else as his lessee was in actual management of the show cannot be a valid defence or a plea in bar of a prosecution for contravention of the provisions of Section 3 of the Act.

20. Turning to the provisions of Section 8 the position becomes more clear and the view I takeof the matter appears to be re-inforced. The section clearly provides that 'if the occupier or the owner of the place permits that place to be used in contravention of the provisions of the Act he is liable, upon conviction, to a certain penalty named in the section. The question arises whether from facts of the present case the petitioner can be said to have permitted the talkie house to be used as a place where the shows were given. The word 'permit' appears to me to

be a word of wide connotation. Understood in ordinary parlance the word means 'suffers' or 'allows.' Murray's dictionary gives the different shades of meaning attached to the word 'permit' which includes 'allow', 'suffer', 'give leave' 'not to prevent' 'give leave or opportunity for' etc.

If the word 'permit' is to be taken in any oneof these senses it becomes reasonably clear that thepetitioner, allowed or suffered the place to be usedfor exhibition of films. Surely, he did not preventthe shows being given there. The mere fact thatsomebody else was in actual charge or managementof the shows cannot in my view be pleaded in exoneration of the charge. It is to be realised in thisconnection that the licence was issued in favour ofthe petitioner. He was the licensee and it was hewho was called upon to discharge the obligationsarising out of that licence. It is a matter of noconsequence that he thought it convenient or profitable to delegate some of his duties or responsibilities to somebody else whom he describes as alessee. There can be no privity as between the licensing authority and the petitioner's lessee. I usethe word privity in this context for want of a betterword.

The obligations arising out of the licence are the petitioner's obligations and I do not think it is any good saying that the petitioner was not the man, who had his feet on the premises but somebody else namely the lessee was the man in charge. This perhaps might be a relevant consideration if the question of mens rea arose in the case.

The question of the petitioner having or not having a guilty mind does not arise under a statute such as this where an absolute prohibition is enjoined by means of express provision contained in the statute itself.

21. The word 'permit' was considered in a way by the House of Lords in the case of --'Lowery v. Walker', 1911 AC 10 (A). The respondent in that case owned a savage horse which he knew to be dangerous. He put it wihtout giving any warning into the field of which he was the occupier and which he knew the public were in the habit of crossing without leave on their way to the railway station.

The appellant in crossing the field was attacked, bitten and stamped on by the horse and the County Court Judge found as a fact that the respondent was guilty of negligence in putting the horse which he knew to be ferocious into a field which he also knew to be habitually crossed by the public and gave judgment for the appellant. It was held that the appellant was in the field without leave but with the permission of the respondent and consequently the appellant was entitled to recover. Earl of Halsbury in the course of his speech observed as follows :

'.....Whether or not a person who knowsthat the public are going over his ground, and going over it habitually, is entitled without warning or notice, or any other precaution whatsoever, to put a dangerous beast where he knows it may be probable -- and almost certain if the tiling continues -- that the beast will sooner or later do some injury to persons crossing the ground, and crossingit in one sense with his permission -- not that he has given direct permission, but that he has declined to interfere and so acquiesced in their crossing it'.

I am not unmindful of the fact that that was a decision rendered in a case where the plaintiff was seeking to recover damage; but even then the shade of meaning to be properly attached to the word 'permit' as used in Section 8, Cinematograph Act, receives, in my view, considerable support from what the noble Lord was pleased to say.

It is clear to my mind that if the petitioner, suffered the shows to he held and did not take steps to prevent such shows he must be held to have permitted them within the meaning of Section 8; and the shows having been thus held at a place which was not licensed under Section 3 of the Act, the petitioner cannot possibly escape the consequence by pleading circumstances in exoneration which might suggest absence of guilty mind.

22. Mr. Mukherjee drew my attention to Sections 174, 175, 170 and 187, Penal Code, one or two of the Criminal Tribes Act and of the Code of Criminal Procedure. I think reference to the latter two enactments is not apposite; and in so far as the sections of the Penal Code are concerned, it is to be observed that in each intention is the gist of the offence.

In the view which I take, it will not be necessary to refer in further detail to this aspect of the matter which was urged to induce the Court to hold that it was essential to establish facts which would show clearly the guilty mind of the petitioner. Even assuming for the sake of argument that those sections of the statutes properly read and construed suggest that before a person can be found guilty, mens rea has to be established, I do not think that the contention at all assists since the language of the statute I am construing at the moment is imperative.

If the view I take is the correct view, then it is a question of absolute prohibition. The argument elaborated by Mr. Mukherjee is that taking into account the word 'permit' used in Section 8, even if a duty was cast upon the petitioner to do something, the discharge of that duty or its disregard would involve respectively the doing of it or forbearnig to do it with a certain intent. I am afraid these considerations do not arise at all; they are repelled by the clear words of the statute which must receive effect. Those words admit of no equivocation and imply an absolute prohibition.

23. I think therefore that the two circumstances which have been proved by evidence in the case, viz., that the place where the shows were held between the period 23rd of April to the 5th May 1954 was a place not licensed, and secondly the petitioner permitted the shows, or at any rate, did not prevent them bring him clearly within the mischief of the Act.

24. The result, therefore, is that this Rule isdischarged.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com