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Náráyan Sáthe[1], one great end of criminal procedure is the prevention and punishment of crime. We think, after considering the record in the present and the other two related appeals, that this end has been attained by the police in securing the punishment of the gang of habitual thieves who have been convicted. How far Hari contributed to the result we are unable to say. He seems to be an accomplice, though perhaps he repented, and by disclosing the doings of the other thieves came under the denomination of informer.—(See note to section 133, Field's Law of Evidence.) The authorities have a right to seek this aid just as the Government has a right to make use of spies, who do not deserve to be blamed if they instigate offences no further than by pretending to concur with the perpetrators. (Per Maule, J., in *Reg.* v. *Mullins* [2].) It may be that Hari's behaviour entitles him to some clemency from the Crown; but this is a matter for the Magistrate and the Commissioner of Police to consider.

Conviction and sentence reversed.

(1) I. L. R., 13 Bom., at p. 597. (2) 3 Cox, C. C., at p. 531.

APPELLATE CRIMINAL.

Before Mr. Justice Jardine and Mr. Justice Telang.

QUEEN-EMPRESS *v.* GOVIND.*

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Abkári Act (Bombay V of 1878), Sec. 45, Cl. (c)—Omission to keep the minimum quantity of liquor according to the terms of license, not an offence under the Act.

Where the accused, who was a licensed liquor contractor, omitted to keep in his shop the minimum quantity of liquor required by the terms of his license,

Held, that the omission of the accused did not come within the meaning of section 45, clause (c) of the Bombay Ábkári Act (V of 1878).

THIS was an appeal by the local Government from an order of acquittal passed by H. Unwin, Sessions Judge of Kárwár, in the case of *Queen-Empress* v. *Govind*.

The accused was a licensed liquor contractor. He was charged with having broken the conditions of his license by failing to

* Criminal Appeal, No. 288 of 1891.

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keep in his shop the minimum stock of liquor ordered by the Collector.

The First Class Magistrate convicted the accused under section 45, clause (*c*) of Bombay Act V of 1878, and sentenced him to pay a fine of Rs. 95.

The Sessions Judge reversed the conviction and sentence for the reasons stated below :—

"It is not easy in this case to discover in what way the Crown, as represented here by the sub-inspector of ábkári, purports to have suffered either pecuniary or personal injury so as to justify its position as complainant against one of its own licensed liquor contractors. It is admittedly not a penny the worse for anything that he has done, or failed to do, whilst no one has come forward on behalf of the public to aver that he feels himself aggrieved by not finding a satisfactory supply of toddy at the Gangáwali shop, on the skirts of the Kumta Táluka.

"Assuming that the direction of the Collector, under Rule No. 5 of this license, to the effect that the defendant shall maintain not less than 2 gallons of toddy at this shop, is in accordance with, and has the effect of, law, so that its contravention became penal under section 45 (*c*) of the Abkari Act, and that defendant had duly received this direction (as to which the only evidence in this case is the *patti* or list of shops, Exhibit A, signed not by the Collector, but by the ábkári sub-inspector only), then fair opportunity should have been allowed the defendant of showing what steps he had taken to comply with this order, and what obstacles lay in his way. The Magistrate does not seem to have given him this opportunity.

"Defendant's license dates only from August, 1890. On the 1st October he petitioned the Collector (*vide* Exhibit B) for the 'usual permission' to purchase and import from the licensed shops in the immediately adjacent táluk of Ankola, just across the river, '50 gallons *pheni* and 100 gallons *chali*,' but on the 10th idem was told that the terms of his license did not permit it. If it was a fact, as he declares, that there was then a dearth of toddy from the trees in the Kumta Táluka, that license must have been a requisition, as it were, to make bricks without straw;

and why each táluk should receive protection, so that Ankola produce should not be consumed in Kumta, does not appear. On the 18th December, defendant appears to have telegraphed to the Collector on the same subject, with a prepaid form for reply, Exhibit (C), which, however, was returned to him blank. The telegram itself is not in evidence, but defendant alleges that it once more sought permission to import toddy from the adjacent Sirsi and other tálukas, and there is nothing to contradict that allegation. Eventually—*i. e.* late in January, 1891—defendant seems to have obtained permission to import toddy all the way from Kárwár, very much farther off than he had all along desired. All these circumstances, and the fact that he was new to the business, should surely have weighed in defendant's favour against the fact that on the 17th February the Gangáwali shop was found by the sub-inspector unsupplied, without any apparent grievance to the public.

"I have, however, already twice elsewhere recorded my belief, that conditions in liquor license which stipulate that the licensee shall maintain a certain *minimum* quantity, or *minimum* ardency of liquor, are *not* consistent with the Abkári Act; and that sections 12, 16, 17, 19, 33, 36, 43, 44, 46 (*a*) and 47 of the Act aim only at keeping down *excess*, and at limiting the *maximum* of both. I have also stated that, in this district, ábkári officers have from such stipulations obviously deduced the mischievous belief, that Government desires an unstinted, full-bodied, supply of liquor to be perennially placed in the ryot's way; and I have pointed out that, if I have construed the Act aright, the final result of such prosecutions as these is that Government is out of pocket, without any public purpose being served; whilst petty ábkári officers obtain power and occasion needlessly to harass the licensees.

"For these reasons I find on both issues in defendant's favour, and reversing the conviction and sentence order that the fine, if paid, be remitted."

Against this order of acquittal, the local Government appealed to the High Court.

Ráo Sáheb *Vásudev J. Kirtikar*, Government Pleader, for the Crown:—Accused committed a breach of his license by keeping an

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insufficient quantity of liquor in his shop. His act falls within section 45, clause (*c*) of the Ábkári Act. Refers to *Imperatrix* v. *Pedru*[1]. The Sessions Judge's observations about the ábkári policy of Government are clearly untenable. Government, having a monopoly in the manufacture and sale of liquor, have made rules for the proper supply of liquor, which are embodied in the terms of the license. A breach of these rules is an offence under the Act.

Náráyan G. Chandávarkar for the accused:—The omission of the accused to keep the required quantity of liquor in his shop is not an "act in breach of any of the conditions of his license" within the meaning of section 45, clause (*c*) of the A'bkári Act—*Imperatrix* v. *Nána*[2]. The section refers only to "acts" and not to omissions.

The judgment of the Court (Jardine and Telang, JJ.) was as follows:—

PER CURIAM:—We think the trying Magistrate's findings on the facts are correct, and we do not concur in the observations of the Sessions Judge as to the policy of the A'bkári Act. But we dismiss the appeal on a ground different from that argued before us. The omission of the accused does not, in our opinion, come within the meaning of section 45, clause (*c*). We follow *Imperatrix* v. *Nána*, in holding that the words "commits any act" do not apply. We have considered *Imperatrix* v. *Pedru*, and have consulted Mr. Justice Birdwood who sat in both cases, and he has informed us that the latter ruling was not intended to overrule the former. We now dismiss the appeal.

Appeal dismissed.

(1) Crim. Rul. No. 9 of 1887. (2) No. Crim. Rul. 19 of 1886.