

APPELLATE CRIMINAL.

Before Mr. Justice Chandavarkar and Mr. Justice Aston.

EMPEROR v. MAGANLAL DULABHAI.*

1904.

January 28.*Bombay Salt Act (Bombay Act II of 1890), section 47†—Salt—Removal of Salt—Intention—Knowledge—Ingredients of the offence.*

To support a conviction under section 47 (a) of the Bombay Salt Act (Bombay Act II of 1890) it is not necessary to prove dishonest intention on the part of the accused; since the wording of the clause does not in express terms or by necessary implication make intention or knowledge an essential ingredient of the offence. What is prohibited by the Act is the removal of salt in contravention of any license or permit and that shows that such removal is prohibited in itself.

APPEAL by the Government of Bombay under section 417 of the Code of Criminal Procedure (Act V of 1898), from an order of acquittal passed by J. Sladen, District Magistrate of Surat.

The accused, a boy, obtained in the usual way on his application a permit for one maund of salt in each of the two bags brought by him. He presented the permit, but his bags were filled with two maunds each. The permit, which is usually signed after the weight and the bags are verified, was signed by both the weighing clerk and the writing clerk at the scales. The accused then removed the bags containing salt, and it was discovered at the Preventive Nāka to be in excess of the permit.

On these facts, the accused was charged with an offence punishable under section 47 (a) of the Bombay Salt Act (Bombay Salt Act II of 1890). The Second Class Magistrate of Bulsār

* Criminal Appeal No. 464 of 1903.

† Section 47 of the Bombay Salt Act (Bombay Act II of 1890) runs as follows :—

47. Whoever in contravention of this Act, or of any rule or order made under this Act, or of any license or permit obtained under this Act—

(a) manufactures, removes or transports, salt; or

(b) excavates, collects or removes natural salt, or salt-carth; and whoever

(c) except in the exercise of some power or the discharge of some duty conferred or imposed upon him under this Act or any other enactment at the time in force receives or is in possession of, or, without lawful excuse, retains contraband salt knowing or having reason to believe the same to be contraband salt; shall, for every such offence, be punished with fine which may extend to five hundred rupees, or with imprisonment for a term which may extend to six months, or with both.

convicted the accused of the offence and sentenced him to pay a fine of Rs. 25.

The accused appealed to the District Magistrate of Surat, who reversed the conviction and sentence and acquitted the accused. The following were his grounds:—

“The Lower Court has convicted on the assumption that so large an excess could not be removed without the appellant's knowledge that he was taking more than the permit allowed. In the face of the evidence this assumption cannot be admitted. There is not a syllable which imputes any guilty knowledge on the part of the appellant. Nor is it safe to assume that every one can tell the difference between one maund and two maunds... There is not in my opinion any ground for assuming that the appellant either obtained double the quantity entered on his permit by collusion with the karkúns, or having obtained it by their carelessness was aware of the fact and tried to remove it.

The Government Prosecutor referred particularly to sections 32 and 35 of the Salt Act. The former requires the subordinate Salt officer ‘to endorse upon the order a certificate signed by himself and by the person who removes the salt, as to the correctness of the weighment’ and the latter makes it ‘incumbent on every person who has obtained a permit for the removal of salt; (b) to prevent the removal of salt in excess of the quantity mentioned in the permit.’ But I cannot hold that he becomes criminally liable if no dishonest intention can be proved.”

The Government of Bombay appealed to the High Court.

The Government Pleader for the Crown.—Under section 47 (a) of the Bombay Salt Act (II of 1890), knowledge is not an essential ingredient of the offence. This becomes apparent when clause (a) is contrasted with clause (c) of the section. Further section 35 of the Act shows that knowledge is not an essential ingredient in the offence under section 45 (a), since the former section imposes upon the permit-holders the duty of testing the scales and weights. The true test is to look at the object of the Act to see how far knowledge is made the essence of the offence, and in this connection three rules of construction must be considered. They are (1) whether the object of the Act will be frustrated, if proof of such knowledge is rendered necessary, (2) whether there is anything in the wording of the section which implies knowledge, and (3) whether this is made clear by comparison of the section with the other cognate sections of the Act. Judged by all these tests, knowledge does not appear to be a necessary element of the offence.

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N. K. Desai for the accused.—The accused is not liable for he cannot be said to have removed salt in contravention of his permit, and if knowledge is not considered an essential in the offence of section 47 (a) of the Bombay Salt Act (Bombay Act II of 1890), it would go very hard with innocent and uncultured purchasers, who would be held criminally liable for the honest mistakes, if any, of the clerks of the Salt Department.

PER CURIAM.—The District Magistrate reversed the conviction under section 47, clause (a), of the Bombay Salt Act on the ground that no dishonest intention on the part of the accused was proved. But the provisions of the section do not in express terms or by necessary implication make intention or knowledge an essential ingredient of the offence. Where the Legislature intended intention or knowledge to be the gist of any offence under the Act it has used apt language to convey its meaning. See clause (c) of section 47 whereby the retention of contraband salt by any person “knowing or having reason to believe the same to be contraband salt” is made an offence under the Act. But it was urged before us by the accused’s pleader that the Legislature omitted to use the words “knowingly or intentionally” in clause (a) of section 47 because it was said the mere act of removal by a person in contravention of his license or permit is sufficient to imply that the removal should be deliberate. We do not think so. In the words of Lord Alverstone, C. J., in *Emery v. Nolloth*⁽¹⁾ “if the offence is prohibited in itself, knowledge on the part of the licensee is immaterial; this principle was acted upon quite recently in *Brooks v. Mason*⁽²⁾ where intoxicating liquor had been sold in a bottle not in fact sufficiently corked but believed to be so, and knowledge was held to be immaterial. Similarly, where there is an absolute prohibition against selling, it is unnecessary to prove knowledge.” What is prohibited by the Salt Act is the removal of salt in contravention of any license or permit and that shows that such removal is prohibited in itself. We must, therefore, set aside the order of acquittal and restore the order of conviction and sentence passed by the Second Class Magistrate against the accused under section 47 (a) of the Bombay Salt Act.

(1) (1903) 2 K. B. 264 at p. 269.

(2) (1902) 2 K. B. 713.