

APPELLATE CRIMINAL.

*Before the Honourable Mr. J. W. F. Beaumont, Chief Justice,
and Mr. Justice Murphy.*

EMPEROR v. GANGUBAI RAMDAS KHEMJI AND ANOTHER
(ORIGINAL ACCUSED).*

1930
December 17.

Criminal Law Amendment Act (XIV of 1908), section 17 (1)—Assisting the operations of an unlawful association—Picketing.

For constituting an offence under section 17 (1) of the Criminal Law Amendment Act, there must be such a connection between the acts of the accused and the operation of the unlawful association that an intention to assist the operation of such association may be properly inferred. It is not necessary that the accused should be members of the unlawful association or that they should be acting in co-operation with it or under its orders. There must, however, be a sufficient connection between their acts and the operations of the association to enable the Court to infer an intention to assist in those operations. The mere existence of a common aim between the person accused and the unlawful association is not enough to involve assistance within the meaning of the section.

CRIMINAL Application No. 478 of 1930 for review against the convictions and sentences passed by H. P. Dastur, Chief Presidency Magistrate, Bombay.

The accused were charged before the Chief Presidency Magistrate, Bombay, under section 17 (1) of the Criminal Law Amendment Act (XIV of 1908) for having assisted the operation of the Bombay Provincial Congress Committee which had been declared illegal by the Government of Bombay Notification No. S.D. 4501 dated October 14, 1930. The Bombay Provincial Congress Committee had appointed a War Council which regulated the actions and controlled the activities of several committees started under its auspices. One of such committees was the Boycott and the Hindustani Seva Dal committee whose main activity was to prevent, by picketing the shops, sales of British and Foreign goods. It sent out volunteers and lady pickets to picket shops selling such goods. On the morning of November 18, 1930, the accused and another lady were

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seen by the Police picketing a shop at Mangaldas Market. The accused were also seen approaching a customer. On these facts the learned Magistrate came to the conclusion that the accused assisted in the main activity of the Boycott Committee and the Seva Dal Association which had been declared as illegal associations and convicted and sentenced the accused under section 17 (1) of the Criminal Law Amendment Act. One Tribhovan Pragji applied to the High Court for reviewing this order.

The application was heard.

H. C. Coyajee and Vasava, with P. A. Dhruva, for the applicants.

Sir Jamshed Kanga, Advocate General, with P. B. Shinane, Government Pleader, with A Kirke-Smith, Public Prosecutor, for the Crown.

BEAUMONT, C. J. :—This is an application in revision made by a third party on behalf of two ladies who were convicted of an offence under section 17 (1) of the Criminal Law Amendment Act of 1908, and sentenced to four months' simple imprisonment and a fine of Rs. 100.

The accused were charged with what is usually called picketing. They were stationed in front of a cloth shop, which sold foreign cloth, and they were endeavouring to persuade people not to enter the shop and buy foreign cloth. They were not charged under what is called the Picketing Ordinance, but, as I have said, they were charged under section 17 (1) of the Criminal Law Amendment Act, with assisting the operations of an unlawful association.

The question whether particular acts amount to assisting the operations of an unlawful association within the meaning of the section must always be one of

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fact to be determined in the circumstances of each case. There must, I think, be some limitation upon the generality of the words. It may be that an unlawful association includes amongst its operations provisions of a perfectly harmless and even beneficent character, for instance, the restriction of the sale of intoxicating liquor, and it would be, I think, impossible to hold that because the suppression or restriction of the sale of intoxicating liquors was one of the objects of an unlawful association, therefore every body engaged in advocating temperance was assisting those operations, and hence committing an offence under section 17 (1) of the Act.

I think that the true limitation to be placed upon the section is really this, that there must be such a connection between the acts of the accused and the operations of the unlawful association that an intention to assist the operations of such association may be properly inferred. It is not necessary that the accused should be members of the unlawful association, or that they should be acting in co-operation with it or under its orders, or anything of that sort. But, I think, as I have said, there must be a sufficient connection between their acts and the operations of the association to enable the Court to infer an intention to assist in those operations. The mere existence of a common aim between the person accused and the unlawful association is not enough to involve assistance.

Now, in this case, the accused did not take part in the proceedings; moreover, we have not got anything like a full record of the evidence, because under section 362 (4) of the Criminal Procedure Code the Chief Presidency Magistrate was not bound to make a record of the evidence, and, I think, we must assume that the facts stated in the learned Magistrate's judgment were properly proved. The accused do not appear even in

this Court, and therefore it was impossible for the advocate who appeared on behalf of the person applying in revision to tell us what happened in the lower Court.

From the judgment of the learned Magistrate it appears that it is amongst the regular activities of the War Council, which is an unlawful association, to engage in picketing cloth shops in order to persuade people not to buy foreign cloth, and that the methods of picketing employed by the War Council were similar to those employed in this case by the accused. In those circumstances, I think that the learned Magistrate was justified in assuming that the accused were in fact assisting the operations of the unlawful association, although there was, I agree, no evidence that they were, in fact, acting under the directions of the association. I think there was, in this case, a sufficient connection between their acts and the operations of the unlawful association to justify an inference that they were assisting and intending to assist in its operations.

I think, therefore, that the conviction was justified and that the application must be refused.

MURPHY, J.:—The two women concerned in this revision application have been convicted under section 17 (1) of Act XIV of 1908 the grounds of the conviction being that on November 18 last they assisted the operations of the Bombay Provincial Congress Committee or War Council, an association which has been notified as unlawful, by picketing some cloth shops in the Mangaldas Market with a view to preventing the sale of foreign cloth. The case was tried summarily and the evidence has not been recorded, as it was not necessary to do this under the Code, and the facts must be gathered from the Magistrate's judgment.

It appears that there were three female pickets stationed at these shops. They were observed doing this

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picketing at 9-30 a.m. and again at 10-30 a.m. They were next seen to accost a customer, on which the policemen went up to them. One of three escaped into a shop whose owner closed his door, and the remaining two were arrested. The learned Magistrate has found that the picketing of shops in this manner is one of the main activities of the War Council to enforce its views as to the sale of foreign cloth by this form of coercion, and that by this action the two women in question were assisting its unlawful operations and were therefore guilty of an offence under the Act.

There is no direct evidence to show that the pickets were acting under the orders of the War Council or were otherwise connected with it. The argument has consequently been that the convicted women could not have been within the section, for any one may hold the opinion that indigenous goods only should be bought, and the sale of imported ones prevented even by resorting to picketing, and may act accordingly without consciously assisting an unlawful association thereby, though in fact such action may afford it indirect assistance, and we have had several examples of such a possibility pressed on our attention. It is of course possible that a person intent only on his private concerns may so assist an unlawful association in its operations, but it is really a question of fact. Where such action coincides with the scheme adopted by the unlawful association itself for its operations, the natural inference is that the assistance was not fortuitous but designed, for we have a similarity of time, method and object all pointing to that end. As the current fashion is in such cases, the persons concerned refused to plead and said they did not wish to participate in the proceedings, describing themselves as *Desh Sevikas*, or servants of the country.

I think that in the circumstances we can only conclude that they were deliberately assisting the operations of the War Council and have, therefore, been rightly convicted.

Rule discharged.

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APPELLATE CIVIL.

*Before the Honourable Mr. J. W. F. Beaumont, Chief Justice,
and Mr. Justice Murphy.*

DAMODAR NARAYAN BEDARKAR AND OTHERS (ORIGINAL PLAINTIFFS),
APPELLANTS v. THE SECRETARY OF STATE FOR INDIA IN COUNCIL, December 19.
AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Land Revenue Code (Bom. Act V of 1879), sections 37, 63—Sale of land by Collector under section 37—Suit by adjacent owner for declaration that such disposal was contrary to section 63 and for recovery of possession from alienee, maintainability of—Limitation Act (IX of 1908), Schedule 1, Articles 14 and 120.

In 1911 the Collector sold to defendant No. 2 the land in dispute under section 37 of the Land Revenue Code, holding that it was not alluvial land but marsh land which had vested in the Government. In 1923, the plaintiffs, who owned lands adjacent to the said land, filed a suit for a declaration that the Collector's order disposing of the land was null and void, that the plaintiffs were entitled to the occupancy and for recovery of possession of the same from defendant No. 2. They contended that as the land was alluvial they were entitled to the first offer of the occupancy under section 63 of the Land Revenue Code :

Held, (1) that assuming that the land was alluvial, the plaintiffs were not entitled to the relief as to possession, as the Collector had not expressed any view under section 63 of the Land Revenue Code as to whether the land could be properly disposed of, having regard to the interest of the public revenue;

(2) that all that the plaintiffs could get was a declaration that the case fell within section 63 of the Land Revenue Code and an injunction restraining the Collector from dealing with the land in derogation of his right. Such an action would be governed by Article 120 of the Indian Limitation Act.

Surannanna v. Secretary of State for India,⁽¹⁾ approved.

Chhotubhai v. Secretary of State,⁽²⁾ doubted.

FIRST Appeal No. 271 of 1926 against the decision of E. H. P. Jolly, District Judge at Ratnagiri, in Civil Suit No. 3 of 1923.

The material facts are stated in the judgment.

*First Appeal No. 271 of 1926.

⁽¹⁾ (1900) 24 Bom. 435.

⁽²⁾ (1919) 22 Bom. L. R. 146.