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Baker J.

I would therefore restore the decree of the First Court and set aside the order of the lower appellate Court, with costs throughout on the plaintiff.

Decree reversed.

J. G. R.

APPELLATE CRIMINAL.

Before Mr. Justice Madgavkar and Mr. Justice Barlee.

EMPEROR v. SAKINABAI BADRUDDIN LUKMANI.*

1930
September 29.

Prevention of Intimidation Ordinance (V of 1930), sections 3 and 4—Liquor shop—Persuading would-be customers not to drink—Loitering—Molestation—Intimidation.

On July 4, 1930, the accused, a Mahomedan lady aged 59 and belonging to a respectable family, was standing at a distance of 25 to 30 paces from a country liquor shop from 10-30 a.m. till midday, with the object of dissuading would-be customers from drinking liquor. There was no evidence to show that the conduct of the accused in any way interfered with the business of the shop-keeper or was vexatious. She was convicted under section 4 of the Prevention of Intimidation Ordinance, 1930. On a reference to the High Court:—

Held, (1) that the accused was not guilty of the offence of molestation under section 4 of the Prevention of Intimidation Ordinance;

(2) that the attempts of the accused to persuade people of the evils of drink and to dissuade them from visiting the liquor shop cannot be said to be with a view to cause the shop-keeper to close his shop within the meaning of section 3 of the Ordinance;

(3) that the words 'such other person' in section 3 of the Ordinance mean that the person molested must be the same person as the person to whose legal rights obstruction is to be caused.

Per *Madgavkar J.*:—"If the section [section 3] is analysed and applied, the result is as follows:—

(1) B, namely, the shop-keeper, has a legal right to keep his shop open; (2) A must intend to interfere with the exercise of such legal right by the shop-keeper; and (3) A must obstruct or intimidate or use violence to him or loiter near his place of business. If all three are proved, A is guilty of molestation."

Per *Barlee J.*:—"The section does not penalize loitering with a view to cause loss to another. It speaks of loitering with a view to causing another to abstain from some lawful act, and the difference is material. The word 'abstain' conveys the idea that the abstainer has an opportunity of doing or not doing an act. . . . It seems, then, to follow that the offence aimed at is the attempt to dominate another's will so as to prevent him from doing an act which he has an opportunity of doing. In other words the section, as the preamble shows, aims at intimidation."

*Criminal Reference No. 85 of 1930.

CRIMINAL Reference No. 85 of 1930 made by B. N. Sanjana, Sessions Judge of Thana, against the conviction and sentence passed by K. T. Chaubal, Resident Magistrate, First Class, at Kurla.

The accused a Mahomedan lady aged 59 and belonging to a respectable family was charged before the Resident Magistrate, First Class, at Kurla under section 4 of Ordinance V of 1930, with having committed an offence of molesting a liquor shop-keeper. The prosecution led evidence to prove that the accused carried on picketing at a country liquor shop at Chembur on July 4, 1930, by standing at a distance of 25 to 30 paces from the shop and dissuading people from going to it for drinking liquor. On this evidence the trying Magistrate came to the following conclusions :—(1) that the accused loitered near the shop within the meaning of section 4 of the Ordinance; (2) that the accused did so with a view to cause the liquor shop-keeper to abstain from keeping his shop which he had a right to do; and (3) that the accused hindered him in the use of the shop. He convicted her under section 4 of the Ordinance and sentenced her to four months' rigorous imprisonment and a fine of Rs. 100 or in default further rigorous imprisonment for one month. The sentence was subsequently commuted by Government to one of simple imprisonment.

The accused did not appeal but the facts having come to the notice of the Sessions Judge of Thana he made a reference to the High Court under section 438 of the Criminal Procedure Code. He disagreed with conclusions Nos. 2 and 3 of the Magistrate for the following reasons :—

" A drink habit is universally acknowledged to be detrimental to the person who has been a victim to it and an effort to wean him from it is always looked upon as praiseworthy. A person who disinterestedly takes on himself or herself to promote temperance amongst masses is invariably respected as a social benefactor. The law has never set its face against such activity so

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long as it is peacefully and reasonably pursued. Neither is the object of the Ordinance to discourage work of the kind for the general good of the masses. When people are dissuaded from frequenting a liquor shop no doubt the business of the shop-keeper is to that extent affected and he suffers in his gains. But because that is one of its results it should not be presumed, in the absence of any additional circumstances pointing to the contrary, that the dissuading was done with a view to compel the shop-keeper to give up his business. And unless it was done with that as its direct, primary and principal object 'dissuading' people from frequenting the shop would not be an offence under the Ordinance. For what is made punishable by section 4 of the Ordinance is molestation and this molestation does not occur, as that word is defined by the preceding section, until the person charged therewith loiters near the shop of another 'with a view to cause such other person to abstain from doing or to do any act which such other person has a right to do or to abstain from doing.'

"It is a cardinal principle of law that so long as the circumstances of a case are fairly and reasonably compatible with an innocent intention the presumption of a guilty one should not be made. Therefore, when a person of the class, age and social position of the lady in this case takes on herself to do the 'dissuading' the ordinary presumption would be that she does it purely as a social benefit work with the object of inducing the party dissuaded to give up a bad habit and not with a view of deterring the shop-keeper from pursuing his business as her direct and immediate purposes. Unfortunately this activity has come to be mixed up with the mischievous programme of civil disobedience and is often pursued as a part of it. But that is no reason why the majesty of law itself should not maintain its detached and dispassionate outlook and discriminate the innocuous from really mischievous and culpable phases of that activity."

The reference was heard.

H. V. Divatia (*Amicus curiæ*), for the accused.

P. B. Shingne, Government Pleader, for the Crown.

MADGAVKAR, J. :—This is a reference by the Sessions Judge of Thana inviting us to set aside the conviction and sentence under section 4 of Ordinance V of 1930, on the accused, Sakinabai, wife of Badruddin Lukmani, who was sentenced by the Resident Magistrate, Kurla, to suffer rigorous imprisonment for four months and to pay a fine of Rs. 100, in default to one month's rigorous imprisonment.

The accused is a resident of the village of Chembur, near Bombay. Two constables stated that from 10-30 a.m. till midday on the day in question the

accused was standing about 25 or 30 paces from the country liquor shop, and that she dissuaded a certain number of persons from going into the shop. The accused alleged that there was no need for her to dissuade because there were no customers. She took no other part in the proceedings.

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The Resident Magistrate, Kurla, held, firstly, that the accused was loitering near the country liquor shop at Chembur, secondly, that she did so with a view to cause the country liquor shop-keeper to abstain from keeping his shop open as he had a right to do, and thirdly, that she hindered him in the use of the shop, and therefore she was guilty under section 4 of the Ordinance and sentenced her as above on July 7, 1930. She did not appeal, but the learned Sessions Judge has made the present reference. His grounds shortly are that even if the learned Magistrate was right on the first point, he was wrong in his inferences on the second and the third points, the accused acted with the object of persuading people to give up drink, not of compelling the shop-keeper to give up his business, and her act did not amount to molestation as defined by section 3 of the Ordinance.

Mr. Divatia as *amicus curiæ* in support of the reference argues that firstly, the accused's statement as that of a lady of position should be preferred that she did not even dissuade customers, secondly, that in any case, her object was the object of all temperance workers, viz., to dissuade people from drink as a poison physical, mental and moral, and that such an act with such an object is not 'molestation' within section 3.

It is contended by the learned Government Pleader that the words in the section "with a view" do not mean merely the immediate object or purpose, but include more remote consequences, and that as

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persistent dissuasion of people from resorting to liquor shops may result in the closing of the business. Such a consequence is a view within the meaning of section 3, and the accused's action is, therefore, molestation.

We assume for the purposes of the present case that the accused was standing near the shop in order to dissuade would-be customers, if she could, from resorting for drink to that shop. The question is whether on these facts she is guilty of molestation under section 3 of Ordinance V of 1930.

The arguments have gone somewhat far and various hypothetical cases have been placed before us. Speaking for myself, it is preferable, I think, in interpreting the law, to confine ourselves strictly to the facts found above and to see whether they do or do not fall within the legal definition of the offence. We are not concerned in this Court with considerations political or religious on either side. To a Mahomedan like the accused, drink is strictly forbidden by her religion; and dissuasion at least of her co-religionists may be a sacred duty. On the other hand, Government derives a large revenue from excise and is to that extent interested in the free sale of liquor. But it was conceded by the learned Government Pleader that the definition on his interpretation was wide enough and in fact it obviously followed from his argument that a temperance worker, who had no other object except to reduce the evil of drink, would be guilty of molestation under the Ordinance.

The Ordinance in express terms is to provide against certain forms of intimidation, and the word "intimidate" occurs in section 3 and in various other places. Section 3 runs as follows:—

"Definition of 'molestation'.—For the purposes of this Chapter, a person is said to molest another person who, with a view to cause such other person to abstain from doing or to do any act which such other person has a right

to do, or to abstain from doing, obstructs or uses violence to or intimidates such other person or anyone in whom such person is interested, or loiters at or near a house where such person or anyone in whom such person is interested resides or works or carries on business or happens to be, or persistently follows him from place to place, or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof."

In the present case, the accused is found to have molested the shop-keeper, because with a view to cause the shop-keeper to close his shop, which he had a right to keep open, she loitered near the shop where he carried on the business of selling liquor. She is not found to have molested any particular customer; and it was not argued for the Crown that it was open to us to alter the finding and conviction into molestation of the customer.

The question reduces itself to this, whether the accused's attempts to persuade people of the evils of drink and to dissuade them from resorting to the shop, could be said to be with a view to cause the shop-keeper to close his shop. There is no particular magic, in my opinion, in the word "view." View is defined by Webster as "that which is looked towards or kept in sight as an object." Intention, purpose, object and view are all allied. In this section as in other penal sections, the view or the object has to be inferred from the acts. There is no evidence here whatever to show that the accused had any knowledge of the shop-keeper, or that the shop-keeper was in sight, or that she, in any way, molested him in the sense in which the word is employed in its ordinary sense. "Molestation" is defined in Webster as an act of molesting, or state of being molested, disturbance, annoyance, hostile, pestering or vexatious interference, etc. Usually the person molested is the person accosted and pestered. It is admitted by the learned Government Pleader that wide as are the words "anyone in whom such person is interested," a possible customer is not a person in whom

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the shop-keeper is interested or *vice versa*. If so, it is clear from the words "such other person" in section 3 that the person molested must be the same person as the person to whose legal rights obstruction is to be caused. If the section is analysed and applied, the result is as follows :

(1) B, namely, the shop-keeper, has a legal right to keep his shop open; (2) A must intend to interfere with the exercise of such legal right by the shop-keeper; and (3) A must obstruct or intimidate or use violence to him or loiter near his place of business. If all three are proved, A is guilty of molestation.

With all respect for the argument for the Crown, it appears to me difficult to hold without definite evidence, that a person, who, rightly or wrongly, is convinced of the evils of drink and of his duty to persuade others of such evil, must necessarily be presumed to have in view to cause any loss to the shop-keeper or of the interference with the shop-keeper's rights. On the contrary, it is not going too far to say that in the case of the ordinary temperance worker, it is the welfare of the drinker which occupies the mind of the worker and not the gain or loss to the shop-keeper. It may be conceded that cases are possible in which such loss or interference is definitely aimed at. For instance, if a rival shop-keeper places persons in order to divert customers from the shop of his rival on to his own shop, he might conceivably be said to have in view, not the welfare of the would-be customer, but interference with his rival's rights to keep his shop open. But without some such evidence, I am unable to assent to the proposition that dissuading people from drink necessarily connotes and compels a conclusion of interference with the right of a shop-keeper to keep his shop open. I agree on this point with the learned Sessions Judge. And the

inference of the Magistrate, therefore, is, in my opinion, wrong, that the accused loitered with a view to cause the country liquor shop-keeper to abstain from keeping his shop open.

On the ordinary canons of interpretation it is not open to us to consider the statement of objects and reasons in the case of an Ordinance any more than in the case of an Act. If the Legislature or the Governor General desires to make temperance work, by which I mean dissuasion of people from drink, a penal offence, the intention must be clearer than it is in the present definition of "molestation" in section 3.

The difficulty really arises from the fact the words "to molest another person who, with a view to cause such other person" necessarily mean that the second "such other person" must be identical with the "another person" molested. It is not, therefore, permissible here to jump in one place from the customer to the shop-keeper in another place. The molestation and interference must be of one and the same person in the case of a single offence. The definition is, no doubt, wide. There are certain words such as, "anyone in whom such person is interested" or even "loiter" which are so wide that they are difficult of definition, and, indeed, of application. It often happens that sections, which are widely worded, are from their nature loosely worded and loopholes result. It is not for us, however, because of the width of the definition or of the loopholes, to depart from the plain meaning of the words or to place a forced or a strained construction on them. On the natural and ordinary interpretation of the words "with a view to cause such other person," i.e., the same person molested, it appears to me impossible to hold that accosting the person, viz., the customer, necessarily is with a view to cause quite another

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person, the shop-keeper, with whom the accused has no communication, to be interfered with in the exercise of his legal rights.

Shortly, therefore, I am of opinion that dissuading a customer is not necessarily, and is not proved in this case to be, with a view to cause the shop-keeper loss, even though persistent and successful dissuasion might possibly in the long run result in such loss. As the learned Sessions Judge rightly points out, temperance work is never discouraged, much less penalised, in any civilized Code or country. I am unable to accede to the contention for Government, on the words of the present section, that the Ordinance penalises it as an offence. If that be the intention, it could and should be plainly and unmistakably so stated in words which would need no elaborate arguments to make their meaning clear so that the Courts can give effect to them.

Even apart from this view of the law, I am constrained to observe that the sentence was harsh and inappropriate. On the record as it stands, the accused, a respectable woman of 60 felt it her duty to dissuade people from drinking. A sentence of rigorous imprisonment for four months and a fine of Rs. 100 and in default one month's rigorous imprisonment was, in my opinion, excessive, and might even be criticised as vindictive. It is necessary at all times, and not least when respect for the law is being undermined, that, whatever the attitude or the politics of any party, the Courts should in all respects scrupulously hold the scales even, observe the correct procedure and that they should not by such sentences themselves still further undermine this respect for the law. Such sentences defeat their own object and usually produce an effect contrary to what perhaps they are intended to do. As

Government has already, it appears, altered the sentence to simple imprisonment, it is not necessary, particularly in the view of the law which I have taken, to labour the point further.

For the reasons stated above, I agree with the view of the learned Sessions Judge and am of opinion that the conviction was wrong in law. I would accept the reference, set aside the conviction and sentence and direct that the accused be set at liberty, and the fine, if paid, be refunded.

BARLEE, J. :—I agree. The Sessions Judge of Thana has reported to us a case in which a respectable Mahomedan lady has been convicted of an offence under section 4 of Ordinance V of 1930. He recommends, for the reasons given by him, that we should set aside the conviction and sentence.

The facts are very simple. The lady stood for some time outside a liquor shop, and, according to some police witnesses, she spoke to some would-be customers of the liquor licensee with a view to persuading them not to buy liquor. The learned Magistrate has held that her standing outside the shop amounted to loitering within the meaning of the Ordinance and that her purpose was to cause the shop-keeper to abstain from keeping his shop.

It has not been denied that her standing outside the shop did amount to loitering within the meaning of section 3 of the Ordinance, but we have to see whether there is evidence to justify the finding that her intention was to cause the shop-keeper to abstain from doing any act which he had a right to do, i.e., to abstain him from keeping the liquor shop. We have to discover her intention from the evidence of her actions and the evidence is meagre. All that we know is—if the police witnesses have spoken the truth—that she tried

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to persuade the would-be customers from buying liquor. There are at least two possible interpretations of her act, (1) (the more probable) that her intention was to promote temperance, and (2) that her intention was to injure the shop-keeper. On the record the best that can be said for the prosecution is that there is nothing at all to show which of these intentions was in her mind. Accordingly, she should have been given the benefit of the doubt and the Magistrate should have assumed that her primary object was temperance reform.

But it has been contended that the lady must be presumed to have known the natural and probable consequence of her conduct, and to have intended it. This doctrine is generally applicable in the case of immediate consequences, but it is not always true that people visualize the remote consequences of their actions. More especially it is doubtful whether emotional people can be presumed to realize the consequences of actions dictated by emotion. However, even if the doctrine is of general application for remote as well as immediate consequences it is useless to the Crown in this particular case, for the secondary consequences of the conduct attributed to the lady are not such as are penalized by the section. The argument is that exhortation to temperance if effective must result in pecuniary loss to a liquor shop-keeper and that the lady must be presumed to have known and intended that result. But the section does not penalize loitering with a view to cause loss to another. It speaks of loitering with a view to causing another to abstain from some lawful act, and the difference is material. The word "abstain" conveys the idea that the abstainer has an opportunity of doing or not doing an act. One does not talk of a man abstaining from selling liquor if he has no customers. It seems, then, to follow that the

offence aimed at is the attempt to dominate another's will so as to prevent him doing an act which he has an opportunity of doing. In other words the section, as the preamble shows, aims at intimidation. It follows that the only act ascribed to the lady was not punishable, for she cannot be said to have attempted to cause the shop-keeper to abstain either by direct or indirect means. It has not been suggested that the sight of an elderly lady standing near his shop had any effect on his will; and, as I have said, the meagre evidence on record does not justify the presumption that she had any intention to intimidate him.

For these reasons I agree with my learned brother that the conduct of the accused did not render her liable to punishment. There is another point. It has been suggested that it was an offence to cause the customers to abstain from drinking, but the wording of the section is clear. They did not live in the shop and what is penalised is loitering near a man's shop or dwelling with a view to cause him, the occupier, to abstain.

For these reasons I agree with the proposed order.

*Conviction and sentence
set aside.*

B. G. R.

CIVIL REFERENCE.

*Before the Hon'ble Mr. J. W. F. Beaumont, Chief Justice, and
Mr. Justice Barlee.*

THE COMMISSIONER OF INCOME-TAX, BOMBAY PRESIDENCY v.
MESSRS. SARUPCHAND HUKAMCHAND OF BOMBAY, A FIRM.*

*Income-Tax—Assessment—Assessee selling agents of a mill company at
Indore—Commission acquired on sale of goods in a Bombay shop of the
company—Income accruing or arising in Bombay for income-tax—Indian
Income-tax Act (XI of 1922), section 66 (2).*

The assessee acted as the secretaries, treasurers and agents of a mill company registered at Indore, outside British India. Under the terms of their

*Civil Reference No. 9 of 1930.

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