

rely on this piece of conduct the accused should have been asked specifically for his explanation of it. But though the failure to follow up this point may be said to weaken the prosecution case to some extent so far as motive is concerned, it is quite impossible to say that the appellant could have had no motive for destroying or secreting the document. We have been taken through the whole of the evidence and as far as I can see there is no sufficient reason for differing from the unanimous opinion of the Judge and the assessors that the evidence of the complainant and his witnesses is true, that it was the appellant who secreted or destroyed the document and that he did so dishonestly.

So the appeal fails and must be dismissed.

N. J. WADIA J. I agree.

*Appeal dismissed.*

J. G. R.

## APPELLATE CRIMINAL.

*Before Mr. Justice Barlee and Mr. Justice Sen.*

EMPEROR v. BABURAO APPA LINGAYAT (ORIGINAL ACCUSED).\*

*Bombay District Tobacco Act (Bom. Act II of 1933), section 17—License granted for privilege of selling tobacco wholesale—Travelling agent selling bidis wholesale to local dealers in a motor car—Agent convicted for not possessing a hawker's license—Conviction illegal.*

The accused was a wholesale travelling agent of a wholesale tobacco merchant in Nasik. The merchant was granted a license for the privilege of selling tobacco wholesale throughout the whole of the Bombay Presidency excepting the city of Bombay. The agent visited the town of Pimpalner by motor car and sold 8,000 *bidis* wholesale to two local dealers and it was found that there were 11,000 *bidis* in his car. The trying Magistrate convicted him for selling *bidis* without possessing a hawker's license for sale under section 17 of the Bombay District Tobacco Act, 1933. A reference being made to the High Court by the Sessions Judge recommending that the conviction be set aside :

\* Criminal Reference No. 36 of 1937.

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*Held*, accepting the reference and setting aside the conviction, that it was not necessary for the accused to have a license for hawking though his procedure would come within the definition of hawking, since the license for wholesale sale was wide enough to cover wholesale hawking.

CRIMINAL REFERENCE made by P. M. Lad, Sessions Judge, West Khandesh, Dhulia, recommending that conviction and sentence passed by E. G. Davies, Sub-Divisional Magistrate, First Class, Eastern Division, West Khandesh, be set aside.

Offence under section 17 of The Bombay District Tobacco Act, 1933.

The accused was the travelling agent of a firm at Nasik, which had the license for the wholesale sale of tobacco. The license granted a privilege of selling tobacco wholesale throughout the whole of the Bombay Presidency and Sind with the exception of the City of Bombay. On July 19, 1936, the accused carried in a motor car a stock of *bidis* to Pimpalner a town in West Khandesh. There he sold 8,000 *bidis* to two local dealers and 11,000 *bidis* were found in the car.

The accused was, therefore, charged with the offence under section 17 of the Bombay District Tobacco Act, 1933, for selling 8,000 *bidis* without a hawker's license and for being in possession of 11,000 *bidis* without a license for sale. The Magistrate convicted the accused and sentenced him to pay a fine of Rs. 30 under section 17 of the Act, and ordered that 11,000 *bidis* attached in the motor car of the accused be confiscated to Government. The accused applied to the Sessions Judge who submitted the proceedings to the High Court under section 438 of the Criminal Procedure Code, 1898, recommending that the conviction and sentence be set aside on the following grounds :—

“The action of the petitioner amounted to this. He, a servant of a firm which had a licence for the wholesale sale of tobacco, and acting on behalf of the firm, brought *bidis* to Pimpalner, that is, outside the places which are mentioned in that licence and carried on wholesale business at Pimpalner. The transactions made by the petitioner at Pimpalner must be described as a wholesale sale, which has been

defined in the Act as a sale of tobacco to traders in that commodity for the purpose of trade as opposed to, I suppose, for the purpose of consumption. How can it be maintained that this action amounts to a contravention of the Act or of any rule or order made under the Act or of any terms or conditions of a licence? In my view, we cannot reach that conclusion. The licence itself authorises the licensee to sell tobacco at places other than his regular shops or places of business without exhibiting a sign-board at such places. See term 4 of the licence which is in Form A. It is not the intention of the wholesale licence that it should be confined to the place of business or even to the District in which such place is situated. It would therefore appear that there is nothing to prevent a wholesale dealer from carrying on his wholesale business outside the places of business indicated in the licence so long as he does not carry on business in the City of Bombay proper. A servant acting on behalf of a master has the same liability as the master himself. It must be said that through him the firm itself was conducting the business and his case cannot be distinguished from that of the master had he himself come to Pimpalner for the purposes of such sales. In my view, it is not the intention of the Act to require a wholesale dealer to have a hawker's licence or even a broker's licence in addition to the wholesale licence already granted."

*B. G. Padhye*, for the accused.

*Dewan Bahadur P. B. Shingne*, Government Pleader, for the Crown.

BARLEE J. The applicant has been convicted under the Bombay (District) Tobacco Act, 1933. He was a wholesale travelling agent of a wholesale tobacco merchant. He visited the town of Pimpalner by motor car and sold 8,000 *bidis* wholesale to two local dealers. Later it was found that there were 11,000 *bidis* in his car. The learned Magistrate asked him whether he had a hawker's license for selling *bidis*. He replied in the negative. He denied that he had ever hawked *bidis* in the Nasik District. The learned Magistrate, however, convicted him and fined him Rs. 30 on the ground that he had admitted that he had sold 8,000 *bidis* without a hawker's license, and had 11,000 in his possession without a license for sale.

We think that the learned Magistrate has erred, for a man may possess and sell *bidis* without a hawker's license. In fact a hawker's license is only one of several forms of licenses which are issued by Government for the sale of tobacco. We find from the *Bombay Government Gazette* of November

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28, 1935, that licenses may be granted for the privilege of selling tobacco wholesale, and for the privilege of selling tobacco retail, as well as for the privilege of hawking. 'Wholesale sale,' according to the Act, means a sale of tobacco to traders for the purpose of trade. 'Hawker' means "a person who goes from place to place or from house to house carrying or exposing for sale tobacco or exposing samples of tobacco to be afterwards delivered." It is clear then that the two functions may overlap, for wholesale trade may be carried on, as it is widely carried on in many countries by means of travellers whose conduct comes within the definition of 'hawking'.

To see whether the applicant could be rightly convicted we have to look to the terms of his license. He was granted a license for the privilege of selling tobacco wholesale throughout the whole of the Bombay Presidency and Sind with the exception of the city of Bombay. The license gives the address of his principal shop and his branch shop and apparently any sale in any portion of the Bombay Presidency is covered by this license so long as the sale is wholesale. The learned Government Pleader asks us to decide that the wide power given to the licensee by the first clause of the license is cut down by clause (3) and clause (4). Clause 3 provides that a licensee shall have constantly fixed up in a conspicuous place at the front of his shops or places of business a signboard bearing in legible characters his name and other details, and clause (4) says that he may sell tobacco at places other than his regular shops or places of business without exhibiting such a signboard. The learned Government Pleader argues that the mention of shops or "places of business" precludes by implication sale at any place outside a shop or place of business. We are unable to accept this interpretation. It appears to us that clause (4) is an enabling section and not a restricting section and that, if we give a beneficial interpretation to this document, we must hold that the licensee was entitled to sell personally or through agents an

rvants wholesale at any place in the Bombay Presidency and that he was entitled to conduct his business by means of travellers.

This being so, we think that the sale at Pimpalner by the licensee's agent of *bidis* wholesale to the tobacco merchants was covered by his license. It was not necessary for the agent to have a license for hawking though his procedure would come within the definition of 'hawking', since the license for wholesale sale was wide enough to cover wholesale hawking. In fact he could not have been given a license for hawking as a hawker is bound by the terms of his hawker's license to confine his sales to consumers only, that is he must necessarily sell retail.

Accordingly we accept the reference made by the learned Sessions Judge and we set aside the conviction and sentence. The order of confiscation of 11,000 *bidis* is also set aside.

*Conviction and sentence set aside.*

J. G. P.

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*Barlee J.*