

(1916) 02 BOM CK 0012

Bombay High Court

Case No: None

Aba Waku Gondhali

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: Feb. 21, 1916**Acts Referred:**

- Bombay District Police Act, 1890 - Section 65

Citation: AIR 1916 Bom 260 : 33 Ind. Cas. 642**Hon'ble Judges:** Shah, J; Batchelor, J**Bench:** Division Bench

Judgement

Batchelor, J.

The applicant has been convicted u/s 65 of the Bombay District Police Act IV of 1890 and the offence imputed to him was a breach of Rule No. 35 framed u/s 39A of the Act of 1890. That rule provides in substance that subject to the provisions of Rule 33 no person shall without a license hold any public performance of a stage play. What the accused is found to have done is this. He paid a sum of Rs. 10 to certain strolling actors in consideration of a performance to be given by them, the accused having the privilege of selling all the tickets and making such profit as he could out of the transaction. It is not alleged that the accused took any personal part in the performance itself. The question is, whether his acts fall under the prohibition of Section 65. The learned first class Magistrate held in the affirmative, because he says that the penultimate clause of Rule 33 clearly shows that persons assisting in the performance are equally responsible, that is, equally with those who give the performance. This interpretation, however, is, we think, a misreading of the words of Rule 33, which are these: "any persons holding or assisting in a performance so prohibited shall be punishable." As we read the words "assisting in," they refer only to persons taking an actual part in the acting or performing which is prohibited.

2. That being so and there being nothing to show that this petitioner took such part in this performance, the Rule must be made absolute, the conviction and sentence

being set aside and the fine, if paid by the applicant, being refunded to him.