

(1964) 01 PAT CK 0005

In the Patna High Court

Case No : Criminal Revision No"s. 1171 and 1172 of 1963

Chouthmal Agarwalla

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 16-01-1964

Acts Referred:

Bihar Sales Tax Act, 1959 — Section 38(2), 8
Bihar Sales Tax Rules, 1959 — Rule 28(1)
Penal Code, 1860 (IPC) — Section 353, 384

Citation : AIR 1965 Patna 8 : (1965) CriLJ 60

Hon'ble Judges : Kamla Sahai, J

Bench : Single Bench

Advocate : S.N. Sahay, N.N. Roy and N.N. Mukherjee, for the Appellant; S.P. Jamuar, for the Respondent

Judgement

Kamla Sahai, J.—These two cases have been taken up together as they arise out of one and the same incident. I shall first give the common facts and some provisions of law, and then I shall deal with each case separately.

2. The prosecution case is that Kanhaiya Rai was an Inspector of Commercial Taxes at Jameshedpur. On the 10th September, 1961, at 11.30 A.M. he went to Kadma Bazar along with his peon, Umeshwar Mahto. He inspected the shops of Himanshu Ghosh and Sharma Stores. Thereafter, he went to the shop of the petitioner, who is a dealer enrolled under the Bihar Sales Tax Act. On arrival there, Kanhaiya Rai disclosed his identity to the petitioner, saying that he was Sales Tax Inspector, and showed his identity card (exhibit 2), which bore his photograph. The petitioner was present, and he said that he was the proprietor of the shop. One Girdharilal was also present. The Inspector demanded to see the books of accounts and loose sheets of accounts and papers which were kept at the sales counter of the shop. The books were rojnamcha credit ledger, and the loose sheets were seven in all. The Inspector started examining them, and detected some discrepancies. He asked the petitioner to explain the discrepancies but the petitioner became furious and started abusing the

Inspector. The petitioner then started snatching the books and papers from the Inspector and the Inspector started keeping hold on them. There was a sort of a tug of war. The petitioner, assisted by Girdharilal, managed to snatch the books and papers, and, along with other papers which the Inspector had with him, and passed them on to Girdharilal who went out of the shop. One Nagarmal helped the petitioner in assaulting the Inspector with fists and slaps and in forcibly taking from him his signature on a blank piece of paper. Thereafter, the Inspector left the shop with his peon, went to the police station, and submitted a written report.

3. The petitioner's shop comprises a room, approximately 10" x 10". There is a tin shutter attached to the door of the shop. When the shop is open, the shutter is lifted with the help of a pole, so that the whole thing looks like a room. The shutter is allowed to fall when the shop is closed, so that it rests upon the door. A table is kept in the shop, and that is used as the sales counter. The width of the table is about 1" x 1 1/2". The Inspector kept standing while inspecting the books of accounts and papers. He was holding them with his hands, and they were also resting upon the table.

4. The petitioner was put upon his trial in both cases along with Girdharilal and Nagarmal. The other two have been acquitted in both cases.

5. I may now refer to certain provisions of law. Certain officers are appointed by the State Government u/s 8(1) of the Bihar Sales Tax Act, 1959 (hereinafter to be referred to as the Act) for carrying out the purposes of the Act. Under Sub-section (3) of the same section, the Commissioner of Commercial Taxes has been empowered to appoint such number of Inspectors of Commercial Taxes as may be necessary to assist any of the authorities appointed, under Sub-section (1). Under the same Sub-section, the Inspectors have been empowered to exercise powers under Sub-sections (1) and (2) of Section 37 and also to perform such other functions as may be prescribed or as the Commissioner may, by general or special order, assign to them.

6. Sub-section (1) of Section 37 gives power to the officers appointed under Sub-section (1) of Section 8 as well as an Inspector to require any dealer to produce before him any accounts, registers, etc., or to furnish any information relating to the financial transactions of the dealer, etc., and it is further provided that the dealer shall comply with such requirement. It has been provided under Sub-section (2) of that section that all accounts, registers and documents relating to the financial transactions of a dealer, the profits derived from such transactions and all goods shall, at all reasonable times, be open to inspection by an officer appointed under Sub-section (1) of Section 8 or by an Inspector, and it is further enjoined that the dealer shall render all possible assistance to such authority or Inspector in carrying out the inspection.

7. Sub-section (3) of the same section gives power to an officer appointed under Sub-section (1) of Section 8 to seize accounts, registers, etc., in certain

circumstances and to grant a receipt for the same. It may be mentioned that this power of seizure has not been given to an Inspector. Sub-section (1) of Section 38 provides for the punishment for infringement of different provisions, including those of Section 37 of the Act.

8. I may now refer to Rule 28 of the Bihar Sales Tax Rules, 1959. Sub-rule (1) of that rule runs:

"Unless the authority or Inspector appointed u/s 8 intends to make a surprise visit, the said authority or Inspector shall give information in writing, to the dealer of the intention to inspect the accounts, registers or documents or stocks of goods produced, raised, processed, manufactured, bought, sold or delivered by such dealer; and in carrying out such inspection the authority or Inspector shall, as far as possible, give due regard to the convenience of the dealer."

Thus, an Inspector or an authority appointed u/s 8 may make surprise inspections; but, if he wishes to make a regular inspection, he has to give information, in writing, to the dealer of his intention, and, in carrying out such inspection, he has, so far as possible, to give due regard to the convenience of the dealer.

9. I may now proceed to deal with the two cases separately.

Criminal Revision No. 1172 of 1963.

10. In this case, all the three accused, viz., Nagarmal, Girdharilal and the petitioner, were charged for an offence u/s 353 of the Penal Code. The trying Magistrate convicted the petitioner of that offence but acquitted the other two. Nagarmal and the petitioner were charged for an offence u/s 384 of the Penal Code, and the trying Magistrate convicted them both under that section. Girdharilal and the petitioner were charged u/s 379 of the Penal Code, and both were acquitted of that charge. The result therefore, was that Girdharilal was acquitted of both the offences with which he was charged; whereas the petitioner was convicted under Sections 353 and 384 of the Penal Code, and was awarded a consolidated sentence, under both sections, of rigorous imprisonment for six months, and Nagarmal was convicted only of the offence u/s 384, and was sentenced under that section to undergo rigorous imprisonment for three months.

11. On appeal, the learned Additional Sessions Judge acquitted Nagarmal as well as the petitioner of the charge u/s 384 of the Penal Code, and he only maintained the conviction of the petitioner u/s 353 of the Penal Code. He reduced the sentence imposed upon the petitioner to rigorous imprisonment for three months, and directed that the petitioner would suffer this imprisonment u/s 353 of the Penal Code,

12. Appearing on behalf of the petitioner, the first point which Mr. Sri Narain Sahay has argued is that, as the Courts below have disbelieved the evidence of Inspector Kanhaiya Rai (P. W. 7) on several points, his evidence on the point of use of criminal force against him while he was discharging his duty should not be

accepted In my opinion, there is no substance in this argument. The Courts below have not disbelieved any part of the evidence of the Inspector (P. W. 7) they have only given the benefit of doubt to the petitioner am) his co-accused in connection with different charges only because of some omissions and discrepancies. That does not amount to a disbelief of any part of the Inspector's evidence. His evidence as P. W. 7 in this case is supported not only by his peon, Umeshwar Mahto (P. W. 2), but also by several independent witnesses, viz., Saligram Singh (P. W. 1), an employee of the Tata Iron and Steel Co., Krishna Kumar Singh (P. W. 4), a neighbouring shop keeper, and Dulal Kumar Chakravarty (P. W. 5), who holds a cloth shop in the neighbourhood of the shop in which the occurrence took place. Kishan Lall (P. W. 3) has made some discrepant statements, and hence he has been declared hostile and cross-examined by the prosecution He has also, however, supported the prosecution case that the petitioner snatched the books and papers from the Inspector, He holds a manihari shop in the same market. Mr. Sahay has taken mo through the evidence of these witnesses, and I see no reason whatever to differ from the conclusion of the Courts below that, while the Inspector (P. W. 7) was holding the books and loose sheets of paper, which rested also on the sales counter, and when he asked the petitioner to explain the discrepancies in the accounts the petitioner started snatching the books of accounts and the papers from the Inspector's hand. The Inspector resisted to some extent with the result that there was a sort of a tug of war; but the petitioner succeeded in snatching the books and papers away from the Inspector's hand, and made them over to Girdharilal, who escaped with them.

13. Another submission which learned Counsel has made is that Inspector was right in starting to inspect the books which the petitioner had given him; but, as soon as the petitioner showed an inclination to snatch the books and papers from the Inspector, the Inspector was bound to let them go without resistance. There is no substance in this argument also. The petitioner willingly allowed the Inspector to inspect the books and loose papers, and, as the Inspector was thus lawfully holding them, I do not see the basis for the argument that the Inspector could not resist the petitioner's attempt to snatch them away from his possession.

14. The next point which Mr. Sahay has urged is that the inspection was unauthorised in law because it was not a surprise inspection but a routine inspection without previous information to the dealer about it. He has referred in this connection to Rule 28(1) of the Bihar Sales Tax Rules, 1959, which I have already quoted. It seems to me, however, that there is no reason to suppose that it was a routine inspection. Mr. Sahay has urged that it was a routine inspection because the Inspector had inspected two shops before coming to the petitioner's shop. An Inspector can hold surprise inspections in several shops one after the other. I do not see why the mere fact that he inspected more than one shop one after the other should convert his surprise inspection into a routine inspection. The fact that the Inspector started inspecting only books and loose sheets of

papers, which were on the sales counter, and which were made available to him without asking for other books and papers shows clearly that it was a case of surprise inspection.

15. Learned Counsel has next urged that the petitioner's act in snatching the account books and papers does not amount to an offence u/s 353 of the Penal Code. It is unnecessary to discuss this point because, in similar circumstances, their Lordships of the Supreme Court held in *Chandrika Sao v. State of Bihar*, 1983 BLJR 450 that the act amounted to an offence under that section. That decision thus furnishes a complete answer to this argument.

16. The last point which Mr. Sahay has urged against the conviction is that the petitioner was justified in using criminal force against the Inspector because the latter had seized the books and papers, although he had no power to seize them, and had actually moved out of the shop. In support of his argument that the Inspector had seized the books and papers, he has referred to the evidence of P. W. 2 who has stated at one place in his cross-examination as follows:

"While paper was being seized, all accused were present, e.g. Chauthmull, Nagarmull and Girdharilal."

17. The learned Additional Sessions Judge has stated that it is difficult to know the Hindi word which P. W. 2 used and which the Magistrate translated as "seized". Apart from this reasoning, I may add that there is nothing in this sentence to show that the word "seized" has been used by P. W. 2 with reference to the act of the Inspector. It may be that he refers to the act of the accused persons in snatching the books and papers from the Inspector, by mentioning the word "seized". This interpretation appears to be indicated by another sentence in the deposition of P. W. 2 in cross-examination, which reads:

"Chauthmull assaulted a moment after he seized the registers."

There can be no doubt that he has used the word "seized" in this sentence with reference to the act of the petitioner Chauthmal, in snatching the registers from the Inspector. Thus, there is nothing to support the argument that the Inspector had actually seized the books and papers in question.

18. Mr. Sahay has referred to the evidence of several of the witnesses to the effect that it was under the tin shutter or sheet that the petitioner was snatching the books and papers from the Inspector. On this basis, he has argued that the Inspector was already going out of the shop with the books and papers when he was intercepted by the petitioner just outside the shop and under the tin shutter where he started snatching them from him. There is no suggestion to any of the witnesses at all that the Inspector was taking away the books and papers when the petitioner intercepted him. A man would be under the tin shutter when he is just outside the petitioner's shop, and he would be inside the shop when he has just put one step inside. The place will thus be almost the same as the distance will be only of about a foot or two. While the petitioner was snatching the books

and papers from the Inspector, they could not have remained static. They may have been moving from just inside to just outside the shop. In these circumstances, I am not at all prepared to accept the contention of learned counsel that the petitioner snatched the books and papers from the Inspector when he was taking them away.

19. No other point against the petitioner's conviction u/s 353 has been raised; but Mr. Sahay has urged the question of sentence. In my judgment, the petitioner's act was a very serious one as it showed complete disregard of law and order. It also showed an intention that the sales tax authorities should not find out the true position about his financial transactions. I do not, therefore, think that the sentence is at all harsh. This application is, therefore, dismissed, and the conviction and sentence imposed upon the petitioner are affirmed.

Criminal Revision No. 1171 of 1963:

20. In this case, the petitioner was charged with an offence u/s 38(1)(i) and (j), and his two co-accused were charged u/s 38(1)(i) and (o). The trying Magistrate acquitted Nagarmal of both the charges; but he convicted the petitioner u/s 38(1)(i) as well as (j), and sentenced him to pay a fine of Rs. 300/- or, in default, to suffer rigorous imprisonment for a month. He also convicted Girdharilal u/s 38(1)(o) and sentenced him to pay a fine of Rs. 51/- or, in default, to suffer rigorous imprisonment for ten days. The learned Additional Sessions Judge has, however, acquitted Girdharilal of the offence u/s 38(1)(o), and he has also set aside the petitioner's conviction u/s 38(1)(j). He has only maintained the petitioner's conviction u/s 38(1)(i), and has maintained the sentence as imposed upon him by the trying Magistrate. It may be mentioned that, u/s 38(2) of the Bihar Sales Tax Act, no Court can take cognizance of an offence under the Act except with the previous sanction of the Commissioner. This case was, therefore, started on the basis of the sanction (exhibit 3) given by the Commissioner. It is unnecessary to refer to the sanction for the other offences. So far as the sanction for prosecution of the petitioner u/s 38(1)(i) is concerned the Commissioner has given the sanction in these terms:

"And whereas I am satisfied that the Kadma Market, P. O. Bistupur, district Singhbhum on the 10th September, 1991 at about 11-30 A.M. Shri Choutmal Agarwala son of Shri Roormal Agarwala of Kadma Market, proprietor of the business known as M/s. Chouthmal Agarwala, bearing sales tax enrolment No. SG-139/E, failed to produce the complete books of Accounts relating to the financial transactions of the said firm before Shri Kanhaiya Rai, Inspector of Commercial Taxes, Singhbhum Circle, in compliance of the requirement made of him u/s 37(1) of the Bihar Sales Tax Act, 1959 and thereby committed an offence punishable u/s 38 (1) (i) of the said Act."

It is thus apparent that sanction for prosecution for this offence was granted on the basis of the fact that the petitioner "failed to produce the complete books of accounts". This case has not been made out by the prosecution. Indeed, the

Courts below have convicted the petitioner u/s 38 (1)(i) on the basis that the petitioner did not supply information asked for by the Inspector u/s 37(1) by failing to explain the discrepancies in the account books, as asked for by the Inspector. Thus, there is difference between the facts Found and the facts on the basis of which the sanction was given. In this connection, I may refer to the decision of the Privy Council in connection with the Cotton Cloth and Yarn (Control) Order in AIR 1948 82 (Privy Council) , Lord Beaumont has observed:

"In their Lordships" view, in order to comply with the provisions of Clause 23, it must be proved that the sanction was given in respect of the facts constituting the offence charged."

Referring to this observation, Kapur J., who has delivered the Judgment of the Court in Jaswant Singh Vs. The State of Punjab, with reference to sanction under the Prevention of Corruption Act, has observed:

"It should be clear from the form of the sanction that the sanctioning authority considered the evidence before it and after a consideration of all the circumstances of the case sanctioned the prosecution, and therefore unless the matter can be proved by other evidence, in the sanction itself the fact should be referred to indicate that the sanctioning authority had applied its mind to the facts and circumstances of the case."

21. It seems to me that the petitioner's conviction u/s 38(1)(i), based as it is upon a fact which is quite different from the fact mentioned in the sanction relating to the petitioner's prosecution, cannot be held to be valid. I, therefore, allow this application, and set aside the conviction and sentences recorded against the petitioner u/s 38(1)(i) of the Bihar Sales Tax Act.