

(1965) 01 KAR CK 0003

In the Karnataka High Court

Case No : Criminal Revision Petition No. 307 of 1964

Hamjisab Mehamadsab Shahapur and Others

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 12-01-1965

Acts Referred:

Mysore Prohibition Act, 1948 — Section 76 (1) (a)
Penal Code, 1860 (IPC) — Section 224, 225

Citation : AIR 1966 Kar 20 : AIR 1965 Kar 20 : (1966) CriLJ 36 : (1965) 1
MysLJ 307

Hon'ble Judges : A.R. Somnath Iyer, J

Bench : Single Bench

Judgement

(1) On June 9 1962, according to the evidence of P.W. 1 a police constable who was on patrol duty, accused 1 was walking on the public road after emerging from a tea shop. P.W. 1 according to his story thought that he was drunk and was incapable of taking care of himself and so had committed an offence punishable u/s 76(1)(a) of the Mysore Prohibition Act. It was in that belief that he intercepted accused 1 and directed him to accompany him to the police station. But on the refusal of accused 1 to do so, he caught hold of his shirt, but, in the meanwhile, accused 2 to 4 who arrived on the scene of occurrence from the direction of the tea shop, pushed P.W. 1 down and accused 2 beat him on his back.

(2) When P.W. 1 according to his story blew his whistle, another constable and three others came to the place, and, when the other police constable made an attempt to apprehend the accused, he was also pushed away.

(3) It was on the basis of this story that there was a prosecution of all the four accused. Accused 1 was charged with having committed an offence punishable u/s 224 of the Penal Code by reason of the obstruction to apprehension and his subsequent escape. Accused 2 to 4 were charged with having committed an offence punishable u/s 225 of the Penal Code by reason of the resistance and

obstruction which they offered to the apprehension of accused 1 and to his subsequent rescue.

(4) Both the Courts below have found that P.W. 1 was obstructed when he wished to take accused 1 to the police station and that accused 2 to 4 rescued him from his custody. These findings rested on the evidence of P.Ws. 1 and 4 which they believed. According to their evidence, accused 1 after he was apprehended by P.W. 1 decamped with the assistance of accused 2 to 4 who assaulted P.W. 1 and pulled two of the buttons from the uniform which he was wearing.

(5) In this revision petition Mr. Deshpande asks me to say that the evidence of P.Ws. 1 and 4 both of whom are police witnesses should not have been believed by the Courts below particularly since there was no other evidence supporting the story told by them. But, it is obvious that it is not open to me in the exercise of my revisional jurisdiction to make a reassessment of the evidence which are believed by the Courts below.

(6) But Mr. Deshpande submitted that the convictions could not be supported since accused 1 who was charged with having committed an offence of being drunk and incapable of taking care of himself punishable u/s taking care of himself punishable u/s 76(1)(a) of the Mysore Prohibition Act was acquitted of that offence by the Magistrate and there was no appeal from that order of acquittal. The argument constructed by Mr. Deshpande was that that acquittal demonstrated that accused 1 was neither drunk nor incapable of taking care of himself and that the apprehension attempted by P.W. 1 was both vindictive and mala fide having for its object no other than the humiliation of accused 1 and the demolition of his reputation in the estimation of the community. Mr. Deshpande maintained that if it was such an activity which was impeded by accused 2 to 4 who must have honestly believed that accused 1 had committed no offence in respect of which he could be taken into custody and that belief which they shared has ultimately been vindicated by the acquittal of accused 1, it was not possible to say that there was any intentional obstruction or resistance to the apprehension of accused 1.

(7) I am not disposed to accede to this argument. P.W. 1 was a public servant who had the authority to apprehend accused 1 for the cognizable offence which he was believed to have committed. It may be that by reason of some of the witnesses on whose evidence the prosecution depended becoming hostile to the prosecution, the charge u/s 76(1)(a) of the Prohibition Act failed. But the order of acquittal which emerged in that situation cannot be depended upon to support the argument that the apprehension of accused 1 attempted by P.W. 1 was not a lawful apprehension within the meaning of S. 224 of the Penal Code. In a case like present one where a person authorised to make an apprehension makes one, such apprehension if it is otherwise within the power and authority of the person making it, does not become unlawful of the charge for the investigation into which the apprehension was made or attempted.

(8) In that view of the matter, even if it could be said that the bona fides of the apprehension made by P.W. 1 have at all any relevance, it would not be useful for the accused to contend that the apprehension was made mala fide. What is really relevant for the purpose of Ss. 224 and 225 of the Penal Code is that the apprehension should be lawful. If it is, it does not matter whether that apprehension was not made or attempted in good faith.

(9) The submission that there was no intentional obstruction or resistance on the part of accused 2 to 4 is to my mind extremely thin. What is necessary to constitute an offence under S. 225 of the Penal Code is that the obstruction or resistance is intentional. An obstruction or resistance is intentional when those who offered the obstructions or those who resisted did so with the intention that there should be no apprehension notwithstanding such apprehension is to their knowledge lawful. In this case it cannot be said that accused 2 to 4 thought or had any grounds for believing that the apprehension of accused 1 by P.W. 1 was not lawful. Indeed, it was. So, it would be futile for accused 2 to 4 to contend that the resistance or obstruction by them was not intentional resistance or obstruction.

(10) Now, the argument proffered on behalf of accused 2 to 4; has to fail for another reason. Those three persons were not only charged with having intentionally obstructed and resisted the apprehension of accused 1 but they were also charged with having rescued accused 1 after he was apprehended. P.W. 1's evidence makes it very clear that the apprehension of accused 1 became complete with his being taken into custody when P.W. 1 held his shirt. If, at that point of time, accused 2 to 4 interfered and extricated accused 1 from P.W. 1 was pushed down and assaulted, it becomes plain that there was a rescue of accused 1 from the custody of P.W. 1 which is an offence punishable u/s 225 of the Penal Code. Such rescue is clearly an offence since the very act of rescue involves the intention to take away the person rescued from the custody in which he is lawfully detained.

(11) In my opinion, the Courts below were right in finding that accused 1 was guilty of an offence punishable under S. 224 of the Penal Code and accused 2 to 4 guilty of an offence punishable under S. 225 of the Penal Code.

(12) The Magistrate sentenced every one of these accused to rigorous imprisonment for a year and the Sessions Judge reduced the sentence to a period of three months. Mr. Deshpande contended that even the reduced sentence was excessive, and, the principal argument addressed in that context was that there was something in the acquittal of accused I which places the matter entirely in a different light and extenuates the conduct of the accused in some measure.

(13) In my opinion, the offences under Sections 224 and 225 of the Penal Code are serious offences. A person who secures his freedom from lawful apprehension in manner in which accused 1 did, pleaded no circumstance in

extenuation. Accused 2 to 4 who obviously depended upon their greater number to overpower P.W. 1 in the course of which they manhandled a public servant discharging his duty, can hardly hope to succeed in their contention that there were any extenuating circumstances.

(14) In my opinion, I should not disturb the sentences imposed upon the accused.

(15) I dismiss this revision petition.

(16) Petition dismissed.