

(1960) 08 AP CK 0004

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 384 of 1959 and Criminal Revision Petition No. 339 of 1959

In Re: Bhupalem Venkata Subbaiah and Others

Date of Decision : 27-08-1960

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 353, 99

Citation : (1960) 11 STC 850

Hon'ble Judges : Anantanarayana Ayyar, J

Bench : Single Bench

Advocate : C. Padmanabha Reddy, K. Somakonda Reddy, for The Public Prosecutor, for the Appellant;

Final Decision : Allowed

Judgement

Anantanarayana Ayyar, J.—The three petitioners have filed this petition praying for revision of the judgment of the Sessions Judge, Cuddapah, in Criminal Appeal No. 119 of 1959 dated 20th July, 1959. They were the three accused in C.C. No. 328 of 1957 on the file of the Judicial First Class Magistrate, Cuddapah. The learned Magistrate convicted and sentenced them as follows :-

(1) Section 147, Indian Penal Code,, against A-1 to A-3.

Sentence :-Each of A-1 and A-3 to pay a fine of Rs. 200 and. In default to suffer simple imprisonment for one month.

A-3 to pay a fine of Rs. 50 in default to suffer simple imprisonment for fifteen days.

(2) Section 353, Indian Penal Code, against A-1 to A-3. Sentence :-Each of A-1 to A-3 to suffer one month rigorous imprisonment.

2. The accused filed Criminal Appeal No. 119 of 1959 before the Additional Sessions Judge, Cuddapah. The latter confirmed the convictions and sentences in toto and dismissed the appeal. Hence, this revision.

3. The prosecution story in brief is as follows :-

The Commercial Tax Officer, Cuddapah (P.W. 5) deputed the Special Assistant Commercial Tax Officer (Evasions) (P.W. 1) to inspect Shree Sai Baba Oil Mills. Accordingly, P.W. 1 went to that mill accompanied by P.W. 2, the Inspector of Commercial Taxes and Sadiq Ali (P.W. 3) at about 2-30 p.m. When they arrived at the mills, they found A-1 sitting upon the front pial of the main building scrutinising some books. A-1 and A-2 are partners of the mill and are residing in the mill premises. A-3 is a clerk of the mill, i.e., Shree Sai Baba Oil Mills. On seeing the approach of P.Ws. 1, 2 and 3, A-1 hastily bundled up all the books in his upper cloth and proceeded towards his house. P.W. 1 immediately rushed up to A-1 and seized the books from A-1. Those books consisted of four exercise note-books, two half foolscap bound books and three bundles of foolscap paper folded along their length. P.W. 1 intended to use them in his inspection of the accounts of the oil mill for comparing them with the regular accounts of the mill. A-10 then raised an alarm saying "(sic)". Then, A-2 and A-3, who were also sitting on the platform came to A-1. About ten workers also rushed there from the mills on hearing the alarm and joined A-1. A-1 pushed P.W. 1 from behind. A-2 caught hold of P.W. 1. Then A-1 snatched the books from the hands of P.W. 1 and passed them on to one of the workers. The latter ran away from the spot through the back door of the mill premises. In the course of this occurrence, A-3 along with two labourers, pushed aside P.W. 2 and caught hold of P.W. 1 and did not allow him to move. P.W. 1 sent word through P.W. 3 to P.W. 5. The latter came to the spot along with another Inspector called Bhujanga Rao. P.W. 1 gave a complaint to the Police, Exhibit P-1, through the Commercial Tax Officer, P.W. 5. The Police investigated the case and filed the charge-sheet.

4. In the trial Court, all the three accused pleaded "not guilty". A-1 and A-2 pleaded alibi saying that they were not present in the factory when the Commercial Tax Officers inspected it. A-3 said that he was in the factory but did not see the Commercial Tax Officers. The accused examined three defence witnesses. D.W. 1 is a man of Kamala-puram who deposed that A-1 came to D.W. 1's house to take a key at about 2 p.m. and that A-1 came again at 2-45 p.m. D.W. 2 is a businessman of Kamalapuram who said that he went to the mill at about 2 p.m. to get some oil cake and that he then found that none of the owners was there. D.W. 3 corroborated the evidence of D.W. 1 and spoke to have seen A-1 at the house of D.W. 1.

5. The learned Magistrate discussed the evidence of D.Ws. 1 to 3 in detail in paras. 1 to 13 of his judgment and disbelieved their evidence for reasons stated by him. The learned Magistrate believed the evidence of the prosecution and arrived at conclusions which resulted in convictions as already referred to above. The learned Sessions Judge agreed with the version of the learned Magistrate substantially on all the relevant points.

6. The prosecution evidence clearly proved beyond doubt or dispute that the occurrence took place. Both the Courts below, including the trial Magistrate who saw the witnesses deposing before him, chose to believe the prosecution

witnesses in preference to the defence witnesses regarding the facts. It has not been seriously contended before me that the version of the, prosecution as believed by the two lower Courts is wrong or that the version of the accused as sought to be proved by the evidence of D. Ws. 1 to 3 is true. I see no reason to doubt the correctness of the concurrent findings of the two lower Courts regarding facts that prove the occurrence. I believe that the occurrence took place, as alleged by the prosecution. The main arguments urged before me are on the basis that the concurrent findings on facts by the two lower Courts were true.

7. It is contended that the provisions of Section 28(3) of the Andhra Pradesh General Sales Tax Act (hereafter referred to, for convenience, as the "Act") and the concerned rules were not observed in conducting the alleged search. Section 28(3) of the Act runs :-

If any such officer has reason to suspect that any dealer is attempting to evade the payment of any tax or other fee due from him under this Act, he may, for reasons to be recorded in writing seize such accounts, registers or other documents of the dealer as he may consider necessary and shall give the dealer a receipt for the same....

8. What the words "such accounts, registers and other documents of the dealer" in Section 28(3) mean is clear from Section 28(1) and (2). Section 28(1) of the Act reads :-

Any officer authorised by the State Government in this behalf may...require any dealer to produce before him the accounts, registers and other documents...relating to his business.

9. Section 28(2) runs :-

All accounts, registers and other documents maintained by a dealer in the course of his business...shall be open to inspection at all reasonable times by such officer.

10. Consequently, if the books and papers (hereafter referred to for convenience as "books") which P.W. 1 seized from A-1 answer the above description, then the seizure by P.W. 1 would be covered by the authority given to the officer u/s 28(3). The trial Court has found that there was no search and that there was only a seizure of something which was openly kept by the accused with him within the sight of P.W. 1 and the other officers. What is openly kept and plainly visible in the hands of a person does not require to be searched for and seizure of such a thing does not require or involve a search. In the present case, the prosecution version is that the accused was having the books openly in his hands when sitting on the pial and were being carried away by the accused and were then seized straightaway. As there is no search and no need; for a search to seize the books, there was no occasion or necessity to follow the provisions relating to search in any place or building for seizure of those books and for

calling upon two more respectable inhabitants of the locality. It does not appear from the evidence that P.W. 1 and party proceeded to the mill premises and before they saw A-1 keeping some books with, him and taking them away, P.W. 1 had any intention of making any search. Consequently, the failure to observe the formalities in conducting a search of premises does not by itself vitiate the seizure. But, all the same, the question remains as to whether the things seized; come within the description of books and registers mentioned in Section 28 of the Act.

11. It is contended on behalf of the petitioners that those books did not relate to the mill and did not come under the category covered by Section 28(3) and hence the seizure was one not authorised by that section. In *In Re: Mariyala Venkateswara Rao*, at page 74, the question was considered as to whether a dealer was bound to allow inspection of private papers which did not come under the category of books mentioned in Section 14(2) of the Madras General Sales Tax Act which is substantially the same as the words contained in Section 28(3) of the Andhra Pradesh General Sales Tax Act. It was held that the officer was not empowered to compel production of such private papers and cash and that if a dealer refused to produce them, he would not be culpable. Therein, it was observed as follows :-

The learned Assistant Public Prosecutor conceded that u/s 14(2) of the Madras General Sales Tax Act, the Assistant Commercial Tax Officer was only empowered to inspect " the accounts and registers maintained by dealers like the petitioner in the ordinary course of their business" and also the goods in their possession and their offices and shops etc., at all reasonable times and that they are, " not empowered to compel the production of private papers and cash"....This is not an accidental slip in Section 14(2), but a deliberate omission by the legislature, so that the privacy of the subject may not be infringed unnecessarily by the myrmidons of Government, under the pretence of examining registers and accounts and goods and shop premises. A man may have private papers which he may not like to show to all and sundry and especially "to Government officials Even a businessman is not bound to reveal all his private secrets, much less incriminating secrets, to people who are not authorised under"the law to pry into them. It is not alleged by the Assistant Commercial Tax Officer or his witnesses that the papers were proved to contain a bill about the alleged sale of this shawl or indeed any accounts relating to the petitioner"s business.

12. In the present case, it is contended by the learned Public Prosecutor that from the circumstances, it can be presumed that the books were of the description given in Section 28(3) of the Act and related to the business of the mills, though there is no direct evidence as to the contents of those books which were seized by P.W. 1 and retrieved by the accused. The physical description of the books has already been referred to above, namely, 4 exercise note-books, 2 bound books and 3 bundles of papers. This description is not decisive. P.W. 1 has stated in his evidence as follows :-

I did not look into books and papers I seized there. Even to this day, I cannot say what those books and papers are and what they contained....

13. From the mere fact that A-1 was trying hastily to take away those books, lest they be inspected by P.W. 1 and the fact that A-1 retrieved them by force from P.W. 1 are not sufficient to presume that these books would have related to the business and been of the description contained in Section 28(3). For, there is nothing to preclude the possibility of those books being private papers and not connected with the mill accounts. It is beyond doubt or dispute that A-1 was residing in the mill premises. He was found sitting with the books on the pial of the mill and not inside the office-room. Therefore the position is that just as in *In re Venkateswara Rao* AIR 1952 Mad. 72 . In that case, it was not proved that the papers concerned came under the description contained in Section 14(2) of the Madras General Sales Tax Act. In this case also, it is not proved that the papers which were taken away by A-1 contained any papers such as described in Section 28(3) of the Act. There is good possibility of the books being private. The accused have not pleaded specifically that they were private books. But, this does not relieve the prosecution of the burden of proving that they were books such as contemplated u/s 28(3).

14. In *Behram Khurshed Pesikaka Vs. The State of Bombay*, at p. 144., it was proved that the accused was smelling of alcohol and, therefore, must have consumed alcohol in some form. The contention of the accused was that he had consumed alcohol which could be consumed without a permit. The Bombay High Court held that the onus was on the accused to prove that he had consumed alcohol that could be consumed without a permit. On appeal their Lordships of the Supreme Court observed as follows:-

...In a criminal case unless the prosecution proves a contravention of a provision that is legally enforceable and valid, it cannot succeed. No onus is cast on the accused to prove that his case falls under that part of the section which has been held unenforceable. The High Court was in error in placing the onus on the accused to prove that he had consumed alcohol that could be consumed without a permit merely on proof that he was smelling of alcohol. In our judgment, that was not the correct approach to the question. The bare circumstance that a citizen accused of an offence u/s 66(b) is smelling of alcohol is compatible both with his innocence as well as his guilt. It is a neutral circumstance. The smell of alcohol may be due to the fact that the accused had contravened the enforceable part of Section 13(b) of the Prohibition Act. It may well be due also to the fact that he had taken alcohol which fell under the unenforceable and inoperative part of the section." That being so, it is the duty of the prosecution to prove that the alcohol of which he was smelling was such that it came within the category of prohibited alcohols and the onus was not discharged or shifted by merely proving a smell of alcohol....

15. In the present case, the books which the accused wanted to remove could have been of two kinds : (i) of the category covered by Section 28 of the Act or

(2) of the category not covered by Section 28 of the Act. The accused was entitled to withhold the books of the latter type and the officers were not authorised in law to seize such books. In view of the above decision of the Supreme Court, the burden of proof cannot be said to be on the accused to show that the books which he removed were of the first category. It originally rested with the prosecution and it continued to rest on the prosecution in spite of the proved fact that the accused removed those books. In the instant case, no adverse inference can be drawn from the fact that the accused did not put forward a plea in their statements in the trial that the books were of the second category. For they could not possibly put forward such a plea in view of the main stand which they took (though ultimately it was found to be false) that no occurrence took place, such as alleged by the prosecution. Further, it is not the case of the prosecution that at the time of the seizure of the books by P.W. 1 the latter put any question or expressed that he suspected them to be the books of the first category or otherwise gave an occasion or an opportunity for A-1 to explain why he was taking away those books. In effect, the prosecution has failed to prove that the books were of the first category and came u/s 28 of the Act and that, therefore, P.W. 1 was entitled to seize such books and that his seizure of those books from A-1 was lawful.

16. The question is whether the action of A-1, A-2 and A-3 with the help of some other labourers constituted an offence. The learned Public Prosecutor relies on Section 99 of the Indian Penal Code which runs:-

99. There is no right of private defence against an act which does not reasonably cause the apprehension of death or of grievous hurt, if done, or attempted to be done by a public servant acting in good faith under colour of his office, though that act may not be strictly justifiable by law.

* * * * 17. In Thathineni Subba Rao, In re [1958] 10 S.T.C. 187, the Commercial Tax Inspector on general duty and the Commercial Tax Officer on special duty, entered the premises of a mill and forcibly removed a gunny bag containing account books from underneath the legs of a clerk of the mill and persisted to inspect the accounts which the accused, one of the employees of the mill, attempted to prevent and in the course of the Commercial Tax Officer's persistence to continue the inspection of the document which the accused tried to prevent, the accused came to push him. It was held by my learned brother Sanjeeva Row Naidu, J., as follows, at page 189 :-

...These being the facts, the following conclusions are inevitable :

(1) that the action of P. Ws. 1 and 2 in forcibly seizing the books from a clerk of the mill was ultra vires of their powers and illegal;

(2) that the accused and other employees in the mill have a right in law to resist such illegal actions on the part of P.Ws. 1 and 2, in exercise of their general right of private defence;

(3) that if, in the course of such exercise of the right of private defence, P.W. 1 came to be pushed, it amounted to no offence, as the force was used in exercise of right of private defence open to the accused in law.

18. If P.Ws. 1 and 2 took the law into their own hands and exceeded their powers and encroached upon the lawful rights of citizens they have only to thank themselves if they came to be assaulted in the illegal exercise of their official functions. This is a clear case where the action of P.Ws. 1 and 2 amounted to a seizure of private property within the meaning of the Madras General Sales Tax Act, 1939, as applied to the Andhra Pradesh State....

19. In the present case also, the seizure is not proved to be authorised by law and was not done after due observance of any formalities. P.W. 1, who was accompanied by P.Ws. 2 and 3, unceremoniously but effectively seized the books from A-1. Immediately, A-2, A-3 and some other persons came to the help of A-1 and they in an equally unceremonious and effective manner retrieved the books from P.W. 1. It does not appear that any force was used in excess of what was barely necessary for recovering possession of the books. No injury was caused to P.W. 1 or P.W. 2 or P.W. 3. It is clear that P.W. 1 acted bona fide in the discharge of his duties. But, it is also clear that the accused could have acted bona fide in getting back the books which could have been liable to lawful seizure. Hence, it cannot be said that the accused had no right of private defence in view of Section 99, Indian Penal Code, or that they committed any offence.

20. I, therefore, allow the revision petition, set aside the convictions and sentences passed against each of the petitioners and acquit each of them of the various charges framed against them. The amount of fine, if paid already, will be refunded to them. Their bail bonds shall stand cancelled.