

(1969) 11 MAD CK 0049

In the Madras High Court

Case No : Criminal R. C. No. 1054 of 1968 and Criminal R. P. No. 1040 of 1968

In Re: S.C. Pandian

Date of Decision : 07-11-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 353

Citation : (1970) LW(Cri) 6

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : R. Shanmvgam for Messrs, K.A. Panchapagesan and S. Mahomed Ansari for Petr, for the Appellant; S. Iagadeesan for The Public Prosecutor for State, for the Respondent

Final Decision : Allowed

Judgement

Somasundaram, J.—The Petitioner is the proprietor of the Golden Cafe situate at the Walltax Road, Madras. P.W. 1, the Joint Commercial Tax Officer, searched this hotel, with P. Ws. 2 to 5 on 18th October 1967 at about 10-20 a.m. He seized some account books and kept them on the table. Ex. D. 7 slip was prepared. The Petitioner was asked to sign, but he refused. P.W. 1 took the slip and kept it in his hand. The Petitioner matched it, with the result, it was torn.

2. On the directions of the Petitioner, the account books which were on the table were taken and carried away by his accountant P. Ws. 1 and 2 proceeded to the police station which is just opposite and gave a complaint, Ex. P. 1 at 1 p.m. P.W. 6, the Sub Inspector came to the hotel, seized the account books, M. Os. 2 to 9 under search list Ex. P. 3, examined the witnesses and then filed the charge sheet against the Petitioner u/s 353, I.P.C. before the VIII Presidency Magistrate, George Town. P. Ws. 1 to 5 deposed to their visit to the hotel, the seizure of the accounts, the snatching of the slip Ex. D. 7 and the other facts adverted to above. When examined in court, the Petitioner stated that he refused to sign Ex. D. 7 and told P. W. 1 that he would do it in consultation with his advocate. He denied the other acts attributed and he did not examine any witness on his side. Believing the evidence adduced on the side of the prosecution, the learned

Magistrate convicted and sentenced the Petitioner to suffer R. I for three months and to pay a fine of Rs. 200 in default to suffer R. 1 for three weeks. The correctness of this conviction is now canvassed in revision.

3. That P. Ws. 1 to 5 visited this hotel on the 18th October 1967 at 10-20 a.m is a fact which does not admit of any doubt. But, the question is as to whether this Petitioner either assaulted or used criminal force to P. W. 1 a public servant, for deterring him from discharging his duties. If the Petitioner had in fact snatched M.O. 1 from the hands of P.W. 1, then certainly it could be said that he had used force within the meaning of Section 349 I.P.C. But, the evidence on this matter is not free from doubt. P. Ws. 1 and 2 proceeded to the police station and gave the report, Ex. P. 1 at 1 p.m. M.O. 1 the torn portion of Ex. D. 7 slip was not then produced before the Sub Inspector, P.W. 6. The carbon copy of this slip has not been produced. Now, in his evidence, P. W. 1 states that this slip was torn. But, he has not stated in Ex. P. 1 that it was torn into two halves. He has merely stated that the Petitioner took away portions of the slip. Taking away portions of a list, which must have been of a few pages, is certainly different from the tearing of the list into two halves. Mere refusal to sign the list is also not an offence. Petitioner's version is that he told the officers that he would sign the list after consulting his lawyer. P. W. 5, the head clerk, states in his evidence that the accused told them that he would sign the list afterwards. The Petitioner as admitted by P.W. 1, had not put his signature in Ex D. 7 slip. When such was the case, there is no intelligible motive as to why he should snatch it away and from P. W. 1. M.O. 1 was handed over to the police only at 4 p.m. P.W. 1 further admits that except this snatching of the slip from his hands, nothing else happened. The Petitioner had successfully challenged an assessment made by P. W. 2. P.W. 1 admits that the Petitioner refused to pay Rs. 5000 towards the State loan as demanded by him. The Petitioner suggests that because of these facts, the department has chosen to come forward with a complaint of this type. He contends that the case of snatching the list from the hands of P. W. 1 has come in for bringing the case within the ambit of Section 353 I.P.C. P.W. 2 further admits that the rent bill book and some account books relating to the construction of the buildings were also seized by them P.W. 3, Loganathan, who prepared the list, Ex. D. 7 as instructed by P.W.1, gives an entirely different version about the snatching. The list, as stated by him, was on the table. The Petitioner attempted to take it P. W. 1 then took the list from the table, and when he was thus taking it, the slip was torn, leaving one half with P. W. 1 and the other half with the Petitioner.

4. This contradiction cannot be rushed aside as immaterial, particularly, when we see that there has been considerable delay in the handing over of the torn M.O. 1 to P. W. 6. P.W. 6, the Sub Inspector, says that when he visited the cafe with P.W. 1 this MO. 1 was not handed over to him. Nor did he see it at this time when P.W. 1 lodged a complaint at the station at 1 p.m. Section 41(3) of the Madras General Sales-tax Act, 1959, enables the officers to seize account, etc of a dealer, but, before resorting to such a course, the officers should record their

reasons in writing. They should also pass a receipt to the assesses, mentioning the books, etc, seized. No such record was made by P.W. 1 before he searched the premises. Be that as it may, there has been no use of force or assault so as to bring the matter within the purview of Section 353 IP C. The conviction and sentence passed against the Petitioner are set aside. He is acquitted of the offence of which he stands convicted. The fine, if collected, shall be refunded. The criminal revision case is allowed. The bail bond shall stand cancelled.