

(1958) 12 AP CK 0002
In the Andhra Pradesh High Court
In Re: Thathineni Subba Rao

Date of Decision : 15-12-1958

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 435, 439

Citation : (1959) 10 STC 187

Hon'ble Judges : Sanjeeva Rao Nayudu, J

Bench : Single Bench

Advocate : G. Krishna Reddi, for For S. Venkata Reddi and D. Sivarama Krishna, for the Appellant;

Judgement

Sanjeeva Rao Nayudu

1. The point that arises for consideration in this revision is whether the act of the accused in snatching away the account books from the hands of P.W. 1, who is not one of the Commercial Inspectors empowered to inspect the accounts of dealers and in using force to P.W. 1 in so snatching away or in preventing P.W. 1 from forcibly taking back the books from him, amounts to an offence ?

2. The facts out of which the prosecution in this case has arisen are as follows : The accused is an employee in Basavamba Rice and Oil Mills. One of the clerks of the mills had a gunny bag under his legs which contained some account books at the time of the offence in question, that is, on 22nd December, 1956, at about 12-30 P.M. P.W. 1 is a Commercial Inspector on general duty whilst P.W. 2 claims to be a Commercial Inspector on special duty and claims to have been empowered under the notification of the Government dated 18th May, 1956, in G.O. No. Ms. 377 Finance (C.T.) as amended and published at page 1259 in the Andhra Gazette dated 7th June, 1956, to inspect at all reasonable times the registers and accounts maintained by the dealers in the ordinary course of business, the goods in their possession, their offices, shops, godowns, vessels or vehicles. It may be seen from paragraph 6 of this amending notification that the Commercial Inspector specially appointed for the investigation of evasions under the said Act has power to inspect at all reasonable times the accounts and registers maintained by the dealers in the ordinary course of their business, the

goods in their possession and their offices, shops, godowns, vessels or vehicles. Even if it is assumed for the purpose of this case that P.W. 2 was the Commercial Tax Inspector specially empowered under this clause, P.W. 1 is not. Further, this amending notification makes it quite clear that it is only the Assistant Commercial Tax Officers specially appointed for the investigation of evasions under the said Act that are empowered to require the dealers carrying on business in any kind of goods to produce before them the accounts and other documents and to furnish any other information relating to such business. A reading of the original notification and its amendment makes it quite clear that the Commercial Tax Inspector specially appointed for the investigation of evasion cannot require dealers to produce their accounts before them. The only reasonable construction to be placed on this notification is that once an Assistant Commercial Tax Officer directs the production of account books from the dealers and the account books are so produced, it would then be open to a Commercial Tax Inspector specially appointed for investigation of evasions like P.W. 2 in this case, to inspect the accounts. The prosecution case is that P.W. 1 and P.W. 2 entered the premises of the mill and forcibly removed a gunny bag containing account books from underneath the legs of a clerk of the mill and having done this illegal act persisted to inspect the accounts which the accused, one of the employees of the mill, attempted to prevent and in the course of P.W. 1's persistence to continue the inspection of the document which the accused tried to prevent, the accused came to push him. 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.
3. If P.Ws. 1 and 2 took the law into their own hands and exceeded their powers and encroached upon the lawful right 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 and also amounted to a seizure of the property under the provisions of the Code of Criminal Procedure, which P.Ws. 1 and 2 had no power to do.
4. The accused not having committed any offence, the conviction and sentence are illegal and consequently are quashed. The fine, if paid, will be refunded. Conviction quashed.