
(1960) 11 BOM CK 0008

In the Bombay High Court

Case No : Criminal Appeal No. 664 of 1960 with Criminal Revision Application
No. 706 of 1960

State

APPELLANT

Vs

Vishandas Motiram Malwani

RESPONDENT

Date of Decision : 18-11-1960

Acts Referred:

Bombay Sales Tax Act, 1953 — Section 36, 44(1), 44(2)
Penal Code, 1860 (IPC) — Section 34, 353, 380
Sales Tax Act — Section 23

Citation : (1961) 63 BOMLR 294 : (1961) NLJ 537 : (1961) 12 STC 409

Hon'ble Judges : Shah, J; Motilal B. Naik, J

Bench : Division Bench

Advocate : V.T. Gambhirwalla, Assistant Government Pleader, for the Appellant;
R. Jethmalani, for the Respondent

Judgement

Shah, J.—Appeal No. 664 of 1960 has been filed by the State against an order passed by the learned Presidency Magistrate, 19th Court, Esplande, Bombay, acquitting one Vishandas Motiram Malwani, who was accused No. 1 in Case No. 188/P/59, of an offence u/s 380 of the Indian Penal Code. Criminal Revision Application No. 706 of 1960 is also filed by the State against all the four accused in the aforesaid case for the enhancement of sentence passed by the learned Presidency Magistrate against them in respect of an offence u/s 353 read with section 34 of the Indian Penal Code. None of the accused, it may be noted, has filed any appeal against his conviction u/s 353 read with section 34 of the Indian Penal Code.

2. The case for the prosecution was that on 7th April, 1959, one Ghanekar, a Sales Tax Officer, received an assignment from the Additional Collector, Sales Tax, Enforcement Branch, to visit the place of business of Messrs L. Chaturbuj & Co. to inspect the books of account and seize the same, if necessary. The Sales Tax Officer, accompanied by Inspector Kandhari, went to the place of business of Bherumal Narayandas on Girgaum Road, where the officer was told, the

proprietor of L. Chaturbhuj & Co. could be contracted. Accused No. 2 was the proprietor of the company. Ghanekar contacted the accused at that place and asked him to show him the books of account of his firm. The accused, however, told him that he had kept the books of account at his residence at Batra House, Sorab Bharucha Road, Colaba. The officer told him to take him there and accused No. 2 took him and the Inspector to his residence mentioned above. At the same time as the Sales Tax Officer Ghanekar got an assignment to visit the business premises of L. Chaturbhuj & Co., another Sales Tax Officer Sidhwani was given an assignment order to visit the residence of accused No. 2 at Batra House for the same purpose, viz. checking his books of account. This Sales Tax Officer Sidhwani, accompanied by an Inspector by name Gandhi and another Inspector Khamgaonkar, went to the house of accused No. 2 at Batra House on the third floor and rang the bell. An old woman answered the bell and told him that accused No. 2 was not at home. Sidhwani along with his Inspectors, therefore, went down and was waiting on the road when accused No. 2 reached there along with the Sales Tax Officer Ghanekar and Inspector Kandhari.

3. The prosecution alleged that accused No. 2 took them all inside his house and made them wait in the drawing-room. One of the Inspectors Khamgaonkar remained outside on the road to watch lest any looks were thrown out on the road from the house of accused No. 2. Accused No. 2 had some whispered conversation with the old lady and a girl and soon thereafter Inspector Kandhari saw and shouted that the girl was throwing out a bill book from the balcony and on this, Ghanekar went inside the bedroom and took charge of the bill book from the hands of the girl who was then in the balcony. According to the prosecution, Ghanekar then asked accused No. 2 to take the books of account which were lying in the bedroom to the drawing-room so that they might be inspected. In the meantime, Ghanekar gave the bill book to Sidhwani for inspection. Just then, accused Nos. 1, 3 and 4 came into the house of accused No. 2 after the door was opened on the door-bell being rung. Soon after their arrival accused No. 1 started questioning the authority of Ghanekar and Sidhwani. The prosecution alleged that Ghanekar showed him the assignment order which he had got from the Additional Collector, but accused No. 1 after looking at it, gave it back to him and told him that it did not give him the authority to visit the residence of the accused. The prosecution further alleged that accused No. 1 thereafter went over and questioned Sidhwani about his authority and that Sidhwani also showed him his assignment order, which accused No. 1 did not even care to see and dropped on the floor. It was picked up by Sidhwani who kept it in his pocket. Accused No. 1 then told them to get out and according to the prosecution, all the accused physically dragged him and pushed them out of the door. Gandhi and Sidhwani, who were the first to be pushed out, went to the Colaba Police Station after having dialed "00". At the Colaba Police Station, Sub-Inspector Kuril gave them two police men to accompany them to the house of accused No. 2 on being informed that there was trouble at the house of accused No. 2. In the meantime, the wireless Police had arrived at the scene and an officer from that Police party

had gone up and was apprised of the incident. That Police officer then took accused No. 2, Ghanekar and Kandhari to the Police Station. The Police Constables sent by Sub-Inspector Kuril also went back with them to the Police Station, where, according to the prosecution, the first report of Ghanekar was recorded. Sub-Inspector Kuril then went with them to the house of accused No. 2. All of them entered the house and accused Nos. 1, 3 and 4 were pointed out to the Police by the Sales Tax Officers as the persons who had taken part in pushing them out of the house. The house was thereafter searched and a panchanama was prepared of the account books which were seized in course of that search. In respect of the seizure of the account books Ghanekar himself prepared a memo. u/s 23 and a receipt which was exhibit 1 in the case. All the four accused were then taken to the Police Station and were put under arrest. The Police then started the investigation of the case and after it was complete, all the four accused were sent up on charges u/s 353 read with section 34 and section 424 read with section 34 of the Indian Penal Code. As regards the charge u/s 424 read with section 34, the case for the prosecution was that about 25 books were lying scattered in the flat when the Sales Tax Officers were pushed out, that on their return to the flat from the Police Station they found the books neatly arranged on a table, that those books were seized by the officers and thereafter the bill book and seven other books were found missing from among those which were lying scattered when they were pushed out. Accused No. 1 was further charged u/s 380 of the Penal Code. In respect of this charge, the prosecution alleged that after accused No. 1 returned the assignment order to Ghanekar, he again snatched it from him while he was pushing him out of the flat.

4. In support of the prosecution case several witnesses were examined including the four Sales Tax Officers. Even the Additional Collector of Sales Tax was examined to say that he had issued the assignment orders to the two Sales Tax Officer at 2-15 p.m. on the day of the incident and also to say that he was the officer who got the report of this incident and gave a sanction to the prosecution. Besides the aforesaid witnesses, the only other witness examined was the Sub-Inspector Kuril who had investigated the case.

5. The accused denied the entire incident alleged by the prosecution. Accused No. 2 stated that Ghanekar had gone to his place of business and demanded the books of account. According to him, Ghanekar actually examined some of the books at his shop and accused No. 2 then told him that he would be prepared to produce the remaining books either at the shop itself or at the sales tax officer. Accused No. 2 further stated the Ghanekar insisted that he would search his flat and that it was Ghanekar who took him to his flat. According to accused No. 2, the other Sales Tax Officer and the Inspectors were also with him when they reached his flat. When they rang the doorbell, accused No. 1 came to the door and he (accused No. 2) told him that the officers were bent upon harassing him and disgracing him. On this, accused No. 2 stated, accused No. 1 tried to reason with them and told them not to make any fuss, but the officers insisted on searching the flat. By this time, according to accused No. 2, accused Nos. 3 and

4 also had gone to the door. Seeing the officers insistent upon taking search of the flat of accused No. 2, accused No. 1 asked them if they had any orders to search the flat and, according to accused No. 2, the officers stated that they had none. On this, accused Nos. 1, 3 and 4 told them that they would not allow them to enter the flat. Accused No. 2 also joined in this opposition. Accused No. 2 then stated they thereupon the officers went away. Accused No. 2 denied that any force was used on them or that they were actually pushed out of the flat. Later, according to accused No. 2, some Police officers went to his flat and took him to the Police Station. His place was searched in pursuance of the Police officers' order and a panchanama was prepared. He, however, denied that any bill book or any account book was missing. As regards the other accused, they had made similar statements denying any use of force and alleging that the officers were not allowed to enter because when questioned if they had any authority, they said that they had none. No evidence, however, was led by the defence.

6. Before the learned Presidency Magistrate some preliminary points of law were urged, one of them being that the incident alleged by the the prosecution disclosed an offence u/s 36(h) of the Bombay Sales Tax Act and that, therefore, except with the sanction of the Collector the Court was not entitled to take cognizance of the alleged offence. On this point, it appears, elaborate arguments were advanced before the learned Presidency Magistrate and the learned Magistrate came to the conclusion that there was no substance in the contention raised on behalf of the accused. He held that the prosecution was perfectly valid without any sanction of the Collector under the Sales Tax Act. According to the learned Presidency Magistrate, the offences charged were under the Indian Penal Code and they were fully distinguishable from the offence contemplated u/s 36(h) of the Sales Tax Act. It appears that after his decision on this preliminary point the case was further head and eventually after taking into consideration all the evidence led before him as also the arguments advanced, both on behalf of the prosecution as well as the defence, the learned Magistrate found that the accused were guilty of the offence u/s 353 read with section 34 of the Indian Penal Code and sentenced accused No. 1 to pay a fine of Rs. 250 in default rigorous imprisonment for six weeks and accused Nos. 2 to 4 to pay a fine of Rs. 100 each in default rigorous imprisonment for three weeks each. The learned Presidency Magistrate, however, acquitted all the accused u/s 424 read with section 34 of the Indian Penal Code and he also acquitted accused No. 1 of the charge u/s 380 of the Indian Penal Code. The state being aggrieved both by the order of conviction and sentence as well as the order of acquittal of accused No. 1, has filed the present appeal as regards the acquittal of accused No. 1 u/s 380 of the Indian Penal Code and revision application for enhancement of the sentence imposed by the learned Presidency Magistrate upon the four accused in respect of their conviction u/s 353 read with section 34 of the Indian Penal Code. As stated above, no appeal or criminal revision application has been filed by any of the accused challenging their conviction and sentence passed upon them u/s 353 read with section 34 of the Indian Penal Code.

7. Taking the appeal first, the learned Assistant Government Pleader, Mr. Gambhirwalla, urged in support of the appeal that the learned Presidency Magistrate was in error in not having taken into account the evidence of Ghanekar and relying upon it for the purpose of convicting accused No. 1 of an offence u/s 380 of the Indian Penal Code. Our attention was invited to the evidence of Ghanekar as also the judgment of the learned Presidency Magistrate dealing with this evidence. Mr. Gambhirwalla contended that the learned Presidency Magistrate failed to appreciate that it was not really necessary for Ghanekar to state in the seizure memo. exhibit 1 in the case, as was stated in his evidence on oath before the Court, the fact as to snatching by accused No. 1 from his hands of the order of assignment which, according to him, was given to him by the Additional Collector under the Sales Tax Act. We have carefully read the evidence of Ghanekar as well as that part of the judgment of the learned Presidency Magistrate which has dealt with it and we are not disposed to disagree with the finding of the learned Presidency Magistrate that the prosecution had failed to prove beyond a reasonable doubt that accused No. 1 had in fact snatched the order of assignment from the hands of Ghanekar as alleged by him in his evidence before the Court. In coming to this conclusion, the learned Presidency Magistrate strongly relied upon the seizure memo. exhibit 1, and, in our opinion, quite rightly. If we turn to the seizure memo. it does described the kind of assault, though not in very minute details, which was alleged to have been committed by the accused upon the four Sales Tax Officers. We do not see, therefore, any reason why, if it was really a fact that accused No. 1 had snatched the order of assignment from the hands of Ghanekar, that fact should not have been stated in the seizure memo. particularly when Ghanekar himself had prepared it. That is not all. Even before the police when his statement was recorded he does not seem to have made any grievance thereof. In our opinion, therefore, the learned Presidency Magistrate was perfectly right in holding that the prosecution had not succeeded in proving to the hilt the alleged offence of theft of the order of assignment from the hands of Ghanekar as alleged by the prosecution. We need not enter into the question as to whether, even if it was proved that the order of assignment was in fact snatched by accused No. 1 from the hands of Ghanekar, such snatching would amount to an offence of theft. For the purpose of this appeal, it is quite enough for us to say that we do not disagree with the conclusion reached by the learned Presidency Magistrate on the point, and we do not see substance in the appeal. The appeal is accordingly dismissed.

8. Turning next to the Criminal Revision Application filed by the State against all the accused for enhancement of sentence imposed upon them by the learned Presidency Magistrate in respect of their conviction u/s 353 read with section 34 of the Indian Penal Code, it was urged by Mr. Gambhirwalla, the learned Assistant Government Pleader, that although there was no kind of hurt or injury caused to any of the officers, even the offence as it was, viz., one of use of criminal force, was serious enough for the purpose of calling for a deterrent

sentence in the interests of law and order and in the interest of safety of public servants in discharge of their public duties. Mr. Jethmalani, the learned counsel for the accused, on the other hand, submitted that he would be content, in case we were disposed to enhance the sentence at all, if the fine was raised as we thought fit. It is significant to note that no appeal has been filed by any of the accused challenging their conviction u/s 353 read with section 34 of the Indian Penal Code and to all intent and purpose the accused did not really want to challenge their conviction even if the sentence was to be enhanced, according as we decided in that behalf. When, however, Mr. Jethmalani told us that he would not like to challenge their conviction in exercise of his right under the Criminal Procedure Code if only the sentence of fine was enhanced and no substantive sentence of imprisonment was awarded, we brought it to his notice that the question of sentence was not a matter of any bargain. We could not obviously give him any assurance as to what we would do after the hearing was over as regards the enhancement of the sentence. Thereupon M. Jethmalani decided to challenge the conviction of the accused and raised a number of contentions for the purpose. He addressed us on these contentions at good length and with a good deal of vehemence and eloquence. The latter was undoubtedly very impressive, but the subject-matter thereof, viz., the contentions, in our opinion, as we shall presently point out, did not hold any substance at all.

9. The first contention that was raised by Mr. Jethmalani was the same as the one which was taken by him before the learned Presidency Magistrate, viz., that the Court could not take cognizance of the offence except with the sanction of the Collector under the Sales Tax Act. For this purpose, he took us first to the evidence of Ghanekar to the effect that none of the officers got even a scratch in struggle and contended on the basis of this statement in the evidence of Ghanekar that all that had happened, according to the prosecution, was that the accused obstructed the officers within the meaning of section 36(h) of the Sales Tax Act and that even if it was true that the officers or any of them were assaulted by the accused as alleged by them, all that was done only for the purpose of obstructing them in carrying out the search or seizing the books and that, therefore, the accused could be prosecuted only u/s 36(h) of the Sales Tax Act and not u/s 353 read with section 34 of the Indian Penal Code. Section 36(h) of the Sales Tax Act is as follows :- "..... obstructs any officer making an inspection, a search or a seizure u/s 23;" whereas section 353 of the India Penal Code is in the following terms :- "whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

10. The term "assault" has been defined in section 351 of the Indian Penal Code. That section runs as follows :-

"Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation. - Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to as assault."

11. "Criminal force" is defined in section 350 of the Indian Penal Code as follows :-

"Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other."

12. As stated above, according to Mr. Jethmalani, what should be looked at is the primary object of the action on the part of the accused. The primary object, according to him, of a case falling u/s 36(h) of the Sales Tax Act would be to obstruct an officer making an inspection, a search or a seizure u/s 23 and the primary object of an assault or use of criminal force u/s 353 of the Indian Penal Code on a public servant would be to obstruct him in discharging his public duty. Mr. Jethmalani contended that the public duty in this case consisted in seizing the books of account by the Sales Tax Officer u/s 23 of the Sales Tax Act, that the primary object even of causing assault to such officer would be to obstruct him in seizing the books and that, therefore, in considering such cases, the element of assault must be completely given a go-bye or overlooked and that the emphasis must be laid only upon the object with which the accused acted in committing the assault or using the criminal force. Mr. Jethmalani went on to contend that obstruction to a public servant in discharge of his duty could be caused in a number of ways - violent or non-violent - but in all such cases, the test would be the same, viz., as to what was the primary object of the act on the part of the accused. The argument though not ingenious, is certainly intriguing. But when we started testing the argument to its logical conclusion and when we put it to Mr. Jethmalani as to whether he would maintain his contention even in a case where in order to obstruct a public servant seizing the books, as in this case, any of the accused had caused either a grievous hurt to or murder of the public servant, we could see the reaction on the part of Mr. Jethmalani and obviously he could not go to the extent of maintaining that even in that case the primary object of the act of the accused should be looked to and that, therefore, the accused could not be convicted or charged with an offence of either grievous hurt or murder, as the case may be. All that he could say was that after all it was a question of degree and that some line had got to be drawn between different types of assault. We fail to understand the logic of this argument and, in our opinion, it is thoroughly illogical and unsound. If one is taking about a principle,

the principle must remain unshaken and unflinching in its application in any and all circumstances. If one could contend that in case of a mere assault or like use of criminal force which does not result in a scratch or an abrasion to a public servant in course of discharge of his duty, the primary object of the act on the part of the accused, namely, to obstruct him in the discharge of his public duty should alone be looked to; how could the principle change just because instead of an assault or use of criminal force, a simple or a grievous hurt or even a murder is caused of the public servant while discharging his public duty ? The very fact, however, that Mr. Jethmalani was not prepared to carry his contention to such an extent shows the very hollowness of his argument. In our opinion, the emphasis, so far as the offence u/s 36(h) of the Sales Tax Act is concerned, is upon the obstruction itself and the obstruction referred to in that sub-section is in regard to an inspection or a search or a seizure by the officer concerned. In causing such an obstruction, in our opinion, it is not at all necessary to cause any assault or use any criminal force to the officer concerned. Effective obstruction can be caused to such an officer while taking a search or an inspection or seizing the books of account by withdrawing the books of account or withholding them or by not producing them before the officer at all. Such an obstruction could as well be caused, if the officer comes for search of the books, merely by standing at the door of the house and preventing only by words his entry into the house. We have already referred to the Explanation u/s 351 which defines assault and it says that :-

"Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault".

13. No gesture or preparation need be made when a person is seeking to obstruct a Sales Tax Officer taking inspection of the books of account or seizing the books of account. He need only say by standing at the door of his house : "You may be armed with an authority of the Collector, but I would not allow you enter my house". These words do not imply any assault nor do they imply any use of criminal force and yet the officer concerned is effectively obstructed in making search of the books or seizing the books. We fail to understand why in any case were a person liable to produce his books of account for the purpose of inspection by a Sales Tax Officer under the Sales Tax Act, really wants to obstruct the officer doing his duty in that behalf, he must necessarily use force. As pointed out above, there are hundred and one harmless way in which the same object of obstructing the officer in carrying out his duty could be achieved. In our opinion, therefore, it is entirely fallacious to contend that section 36(h) of the Sales Tax would cover the case of an obstruction to public officer in discharge of his public duty, where such obstruction has been caused by a physical assault or by using criminal force. As a matter of fact, if we turn to section 353 of the Indian Penal Code, the emphasis is not at all on obstruction. The word "obstruction" is not even used in that section. That section, as quoted above, is a penal section and what is penalised is the act of assault or the use of criminal

force. If the assault is made or the criminal force is used to any person being a public servant while such public servant is executing his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, such a kind of assault or the use of criminal force is penalised u/s 353 of the Indian Penal Code. The public servant may be assaulted or criminal force may be used against him inter alia with the intention that he should thereby be prevented or deterred from discharging his duty. This may or may not result in the public servant being obstructed in carrying out his duty. But the gravamen of the offence is not the obstruction which may be the result of the assault, but the very act of assault or use of criminal force itself. Accordingly, we do not see any comparison between the offences respectively contemplated by section 36(h) of the Sales Tax Act and section 353 of the Indian Penal Code. There is no genus out of which the offences as contemplated by these two respective sections arise. In other words, these two offences are not the species of the same kind. They stand entirely in different categories and they have got nothing in common between them. In our opinion, therefore, the offence alleged by the prosecution, falling as it did u/s 353 of the Indian Penal Code, did not require any sanction of the Collector for proceeding against the accused in respect thereof. We may mention that it was open to the Sales Tax Officers to ignore the assault or the use of criminal force made against them by the accused and just to proceed u/s 36(h) for having been obstructed in seizing the books of account of accused No. 2. That, however, was a matter entirely of their choice. Where if they were physically assaulted and criminal force was used against them, there was nothing to restrict them only to a prosecution u/s 36(h) of the Sales Tax Act and not to prosecute the accused under the ordinary criminal law embodied in the Indian Penal Code. In the result, we are afraid, in spite of the vehemence and eloquence of Mr. Jethmalani on this point, we find no substance therein whatever.

14. It was next contended by Mr. Jethmalani that Ghanekar had no authority whatever to enter the flat of accused No. 2 and that, therefore, accused No. 1 was perfectly justified as also the other accused in asking him to leave the flat. Mr. Jethmalani contended that the order of assignment which Ghanekar produced to accused No. 1 only related to the business premises of accused No. 2 at Girgaum Road. Under that order Ghanekar was not given any power to enter the residence of accused No. 2 for the purpose of seizing the books of account of his firm. According to Mr. Jethmalani, therefore, entry of Ghanekar into the flat of accused No. 2 was entirely unjustified and that, therefore, accused No. 1 and all the others were justified even by use of force in throwing him out of the flat. To this contention, there are two answers. Firstly, the Collector under the Sales Tax Act had issued an order u/s 44(1) of the Bombay Sales Tax Act on 22nd October, 1956, delegating to the officers specified in column 1 the powers and duties of the Collector of Sales Tax under such of the sections of Bombay Sales Tax Act and the rules made under that Act as were shown in columns 3, 4, 5 and 6 respectively of Schedule "A" appended to that order. One of these sections is

section 23 and it is not disputed that both Ghanekar and Sidhwani were the Sales Tax Officers, Enforcement Branch, Bombay, in whose favour the order also operated in regard to the delegation of the powers and duties of the Collector under that section. In view of this order, therefore, it was not at all necessary for the Collector to issue any specific order of assignment empowering them to do any of things contemplated by section 23 of the Sales Tax Act. It was, however, urged by Mr. Jethmalani that according to the evidence of the Additional Collector, there was a practice followed in the Collector's office of issuing such orders of assignment even u/s 23 whenever an occasion arose in that behalf. It was further contended that the order referred to above by clause (5) thereof specifically provided that the powers and duties delegated under that order shall be exercised subject to such conditions and restrictions as the Collector might impose from time to time. According to Mr. Jethmalani, if on the evidence of the Additional Collector orders of assignment used to be issued even as a matter of practice subsequent to the date of the order referred to above, that must have been in consequence of the conditions and restrictions imposed by the Collector as contended by clause (5) of the order referred to above. Mr. Jethmalani contended that the evidence of the Additional Collector in this connection clearly showed that the practice of issuing orders of assignment even subsequent to the order aforesaid must have continued on account of a certain order that might have been passed by the Collector orally. It appears, however, that during the cross-examination of the Additional Collector it was elicited that he did not remember as to whether any such order was in fact passed or not. What, however, the witness was certain about was that the practice of issuing orders of assignment which prevailed before the issue of the order of the Collector referred to above continued even after the order was made as a matter of convention. This evidence, therefore, in our opinion, does not lead to the conclusion that the effect of the order passed by the Collector as stated above was nullified and that the officers authorised under that order to exercise the powers inter alia u/s 23 of the Sales Tax Act had necessarily to obtain an order of assignment from the Collector in cases where the officers wanted to act under the provisions of section 23 of that Act. If any restriction was to be imposed on the powers conferred by the Collector upon the officers mentioned in that order, was would expect another written order in that behalf. At one stage of the cross-examination of the Additional Collector he was called upon to produce such written order, if there was any. The Additional Collector on the next day of the hearing, however, produced an order, which was not the order referred to by him in his evidence on the prior occasion. It was on that day that the Additional Collector said in his evidence that and order might have been orally passed by the Collector for the purpose of continuing the old practice. Reading the evidence of the Additional Collector on this point as a whole, we do not think that the Collector had imposed any restrictions or conditions as regards the exercise of the powers which were delegated by him under the order dated 22nd October, 1956. In our opinion, therefore, although Ghanekar had not with him the order of assignment empowering him to enter the residential premises of accused No. 2,

as a matter of law such an order was not necessary at all. The order dated 22nd October, 1956, was already passed by the Collector empowering him to exercise the powers u/s 23 of the Act and it was enough if, on being questioned in that behalf by the occupant of the flat, i.e., accused No. 2, he stated to him that he was acting in exercise of the powers delegated to him by the Additional Collector by the order dated 22nd October, 1956.

15. Even if it be assumed for a moment that such an order of assignment was necessary, we do not think that on the evidence in the case it was really necessary for Ghanekar to produce any such order at all. It was admitted by accused No. 2 that Ghanekar did possess an order of assignment authorising him to visit the business premises of accused No. 2 and inspect and seize the books if he so thought fit. Ghanekar's evidence specifically shows that it was accused No. 2 himself who stated to him when he approached him at his business premises that his books of account were lying at his flat and that he would take Ghanekar to his flat for the purpose of taking inspection of the books. If accused No. 2 knowing full well that Ghanekar had no authority or order of assignment empowering him to enter the flat of accused No. 2, voluntarily took him to his own flat, surely, in our opinion, it would not be open to him to contend that he had no power to enter his flat and that, therefore, he could not either take inspection of books or seize them. If he was so particular about the order of assignment with regard to his residential premises, it was open to accused No. 2 to tell Ghanekar to get the necessary order of assignment and then go to his flat. Accused No. 2, however, according to the evidence of Ghanekar did not do so. In the circumstances of the case, therefore, neither accused No. 2 nor accused No. 1 nor any other accused for that matter was justified in throwing out Ghanekar and his companions from the flat after they were allowed an entry therein, merely on the pretext that Ghanekar did not have the necessary authority from the Collector in that behalf. Beside, it must be noted that so far as Sidhwani was concerned, he had the necessary order of assignment entitling him to enter the residential premises of accused No. 2 and inspect and seize the books, if though fit. Accused No. 1, according to the evidence of Sidhwani and others, had an occasion to look at the order. In spite of it, it appears from the evidence, accused No. 1 assumed a high-handed attitude and bullied the officers to leave the flat on pain of being assaulted and thrown out. Obviously, Ghanekar having been allowed an entry voluntarily by accused No. 2 in the flat and Sidhwani being armed with the necessary order assignment entitling him to enter the flat and inspect the books of account, naturally resisted the bullying attitude of accused No. 1. It appears from the evidence that on the officers resisting this attitude, accused No. 1 and others took the law into their own hands, lifted up the officers bodily and put them out of the flat. This action on the part of the accused could not be said to be justified at all. For the moment, however, so far as the point raised by Mr. Jethmalani is concerned, viz., that the entry into the flat by Ghanekar was unwarranted and illegal, we are clearly of the opinion that in spite of the fact that Ghanekar had no specific order of assignment empowering him to

enter the flat of accused No. 2, accused No. 2 himself having voluntarily allowed the entry into his house, no specific order of assignment was necessary for Ghanekar in that behalf. Accordingly in our opinion, the contention raised by Mr. Jethmalani in this behalf must be rejected.

16. Mr. Jethmalani next contended that neither Ghanekar nor Sidhwani could seize the books of account of accused No. 2 in the absence of a further order by the Collector assigning the proceedings relating to sales tax assessment in respect of the business of accused No. 2 u/s 44(2) of the Sales Tax Act. According to Mr. Jethmalani, seizure of the account books could take place only during the said proceedings and the Collector must, therefore, transfer the proceedings to the officer concerned u/s 44(2) of the Act before the latter could exercise his powers u/s 23 and seized the books of account. In our opinion, there is no substance in this contention. Powers u/s 23 of the Act are intended to be exercised only for the purpose of investigation in a case where a businessman is suspected to be evading the payment of sales tax. The proceedings for the purpose of assessing the tax would commence only on a report being made by the officer carrying out the investigation. The expression "proceedings" connotes a type of action in which some sort of dispute is to be decided. The Sales Tax Act deals with these "proceedings" in Chapter VII commencing from section 27, whereas section 23 falls under Chapter VI entitled "liability to produce accounts, to supply information and to pay the tax in the case of transfer of business". In our opinion, therefore, it is not at all necessary for the Collector to pass any order assigning the "proceedings" in favour of a Sales Tax Officer u/s 44(2) of the Act before such officer exercises his powers u/s 23 of the Act. Apart from this, however, it appears from the assignment orders produced as exhibit 2 in this case, that the "case" of accused No. 2 as proprietor of L. Chaturbhuj & Co. was assigned to the two officers for inspection and verification of books of accounts, search of premises where books are likely to be kept, seizure of the books if necessary, their examination and further necessary action u/s 23 of the Bombay Sales Tax Act, 1953. If the word "case" as used in these orders means a "proceeding", the orders of assignment can well be said to have been passed both under sub-section (1) and sub-section (2) of section 44 of the Act. Accordingly, we do not find any substance in Mr. Jethmalani's contention either because the powers u/s 23 are to be exercised in course of investigation before the commencement of any proceedings under Chapter VII of the Act or because, if "case" means the "proceedings", it had already been transferred to the officers for the limited purpose of investigation u/s 23 of the Act by the same assignment orders.

17. It was next contended by Mr. Jethmalani that Ghanekar having had no order of assignment empowering him to enter the flat of accused No. 2 and accused No. 1 having thereupon asked the officers to leave the flat and the officers having refused to leave the flat, the accused were justified even by use of criminal force in putting them out of the flat, because in law u/s 79 of the Indian Penal Code if the act of the accused which otherwise would amount to an offence

was committed in a bona fide mistake, then the act would not amount to an offence at all. We are afraid, we cannot accept this contention either. On the evidence it is clear that accused No. 2 knew very well that Ghanekar was not a trespasser into the flat. It was for accused No. 2 to tell accused No. 1, when he asked the officers to go out of the house because none of them had any authority to enter the flat and take inspection of the books or seize them, that Ghanekar had in the first instance gone to his business premises from where he himself had taken Ghanekar to his own flat of his own accord. If accused No. 2 did not tell the true facts to accused No. 1, we cannot agree with Mr. Jethmalani that accused No. 1, under a bona fide mistake, had asked the officers to leave the flat and on their refusal used criminal force for the purpose of putting them out of the flat.

18. It was further contended by Mr. Jethmalani that the officers had the power under the order of assignment and u/s 23 of the Act only to seize the books, but they had no power to squat in the flat and inspect and examine the books. To the extent, therefore, according to Mr. Jethmalani, the officers continued to squat in the flat and examine the books of account, their action was entirely illegal and that, therefore, the accused were justified even by use of criminal force in throwing them out of the flat. We cannot appreciate this contention either. Undoubtedly, the power u/s 23 of the Act which is to be exercised by the officer concerned relates to seizure of the books, but it is difficult to imagine that the officer would want to seize all the books he comes across in the premises which he visits. He must necessarily find out in the first instance whether the books he is able to find are really relevant for the purposes of the Sales Tax Act and that would not be done unless and until the officer concerned looks at the books of account and ascertains for himself as to whether those books are really relevant for the purposes of the Act. If there are a number of books to be examined in that behalf, it does undoubtedly take some time and if during that period of time the officers squat in the flat and examine the books with the ultimate object of selecting what books they should seize, in our opinion, the action of the officers in that behalf cannot be branded as a trespass. There is no evidence on the record of this case to suggest that the officers were regularly inspecting the books of account with a view to take out extracts from them. Mr. Jethmalani, in cross-examination of these witnesses, has not been able to elicit any answer from any of these witnesses to the effect that they squatted in the flat for any definite period of time for the purpose of examining the books of account. In the absence of any evidence, the inference that could legitimately be drawn is that the officers undoubtedly squatted in the flat only for the purpose of finding out as to which of the books which they found in the flat should be seized. In our opinion, therefore, there is no substance in the contention raised by Mr. Jethmalani in this behalf.

19. While enumerating the points of contentions that Mr. Jethmalani proposed to raise, he stated that the order of assignment was defective and when questioned as to what was meant by the word "defective", he stated that it was "suspicious".

No arguments, however, were advanced by Mr. Jethmalani on this point at all and, therefore, we need not pursue that point at all.

20. On the merits, Mr. Jethmalani's first contention was that the evidence of these witnesses should not be believed even as regard the charge of assault, because the learned Magistrate had found on appreciation of their evidence that the allegation made by them before him on oath that some of the books were missing from the flat when they returned with the Police officers to the flat was falsified by the evidence of the Police officers. According to Mr. Jethmalani, the learned Magistrate had not minced words in stating that the evidence of these witnesses in that behalf was not only untrue but it was actually falsified. Mr. Jethmalani, therefore, contended that there was no guarantee that the version of the witnesses as regards the incident of assault was true and that, therefore, their evidence in that behalf should be discarded as unworthy of credit. In the first instance, looking to the record of this case, we are not prepared to agree with the learned Magistrate that the Sales Tax Officers had made any false statement with reference to the missing of the books from the flat after they returned with the Police there. To the seizure memo. which was prepared by Ghanekar himself there is a list of books attached in respect of which a receipt was passed in favour of accused No. 2. If we look at this list, it appears that as regards the cash books pertaining to the business of accused No. 2, only 4 cash books were found by the officers. They were (1) from September, 1954, (2) from March, 1957, (3) from July, 1958 and (4) from March, 1959. There is no evidence on record as to what was the financial year in respect of the business of accused No. 2, but it is clear that it could not in any event be more than 12 months. If we consider the cash books from March, 1957, and from July, 1958, there is a gap of more than one year. There must, therefore, necessarily be another cash book covering at least the period between 1st April to 30th June, 1958. That cash book was not found in the premises during the seizure by the officers. Then again, there is a cash book from September, 1954. There is undoubtedly no evidence to suggest as to whether the officers required the books of account from 1954 onwards. But from the fact that the cash books from September, 1954, was among the books that were seized by the officers, it is reasonable to infer that they wanted the later books as well. Obviously from the list it appears that the cash books for 1955 and 1956 were not found in the premises at all. So far as the ledgers are concerned, only three ledgers were found. Obviously, if we take the accounts from 1954 to 1959, there should have been at least five or six ledgers. In these circumstances, therefore, we are not prepared to agree with the learned Magistrate that the statement of Ghanekar on oath before him during the course of his evidence that seven or either books were missing when he along with the Police officers returned to the flat was in any manner false or untrue. It may be that Ghanekar did not in the seizure memo. that he had prepared mention the missing of the books. It may be that he did not mention the missing of these books also to the Police in the course of his statement. But it is quite likely, on the other, hand, that Ghanekar might have

found the books missing when he looked into them later on at his own office where they were obviously removed from the flat of accused No. 2. In that event there as nothing to prevent Ghanekar from giving evidence about it on oath before the learned Magistrate in spite of the fact that he did not mention it either in the seizure memo. or in his statement before the Police. It all depends on as to when Ghanekar came to know that some of the books were missing. In the circumstances, as stated above, we are not prepared to agree with the learned Presidency Magistrate that the evidence of Ghanekar was false in so far as he stated that on return from the Police Station along with the Police officers he found seven or eight books missing.

21. Even assuming, however, that the statement of Ghanekar in that behalf could be characterised as untrue, it does not necessarily mean that the evidence given by him and adequately corroborated by other officers who were similarly dealt with by the accused should be discarded and that the accused should be believed. It is not necessary to repeat the well established principle that just because a witness happens to tell a falsehood on some aspect of the matter, it does not necessarily mean that he has been telling falsehood all along. It all depends upon what view the court takes of the evidence of the witness as a whole. In this case, the circumstance that strikes us as most outstanding and impressive is that Sidhwani and Gandhi went to the Police at Colaba Police Station to seek their help complaining that there was trouble at the flat of accused No. 2, Surely, it was not as a matter of fun or frolic that Sidhwani and Gandhi could have gone to the Police Station if in fact there was no trouble at the flat of accused No. 2. Obviously, the question arises, why should they have gone at all to the Police Station seeking their help, if they were allowed to perform their duties at the flat of accused No. 2 in the manner in which they were required to be done by law. This in itself lends considerable corroboration to the evidence not only of Ghanekar but also to the evidence of all the witnesses on the point of assault and use of criminal force by the accused against them.

22. Mr. Jethmalani conceded and so also the accused in their statement before the court that Sidhwani and Gandhi had in fact gone to the Police and that the Police had come back to the flat. It is were just an obstruction of a simple kind without any assault or use of criminal force, we do not think that it was necessary for any of the officers to seek Police help. They could have taken action u/s 36(h) of the Sales Tax Act against the accused for having obstructed them in either inspecting or searching or seizing the books of account from the flat. The aid of the Police became necessary, in our opinion, because the accused had assaulted the officers and had also used criminal force by bodily lifting the and putting them out of the flat. In view of this circumstance, therefore, whatever may be the minor contradictions in the evidence of the witnesses, we are not prepared to disbelieve the evidence of any of these witnesses on the main part of the case, viz. that all the accused had combined together in bodily throwing all the officers out of the flat.

23. It was then contended by Mr. Jethmalani that according to the accused, none of the officers had actually effected an entry into the flat at all. They were stopped at the door itself and that on being so stopped, the officers turned their back upon them and went away. We need not examine this defence of the accused in any detail, because to use it clearly appears that in view of the unimpeachable evidence of the four Sales Tax Officers the defence raised by the accused is entirely false.

24. These were all the contentions raised by Mr. Jethmalani in support of his challenge to the conviction of the accused u/s 353 read with section 34 of the Indian Penal Code.

25. As regards the sentence, Mr. Jethmalani urged that all the four accused were businessmen in the city and that if at all we were inclined to enhance the sentence imposed by the learned Magistrate upon them, enhancement of the sentence of fine would be sufficient penalty for these businessmen, who, according to him, have got a credit of their own to maintain in the market. The argument seems to be quite plausible. But at the same time thus was more the concern of the businessmen - the accused themselves - before committing the offence rather than the court at this stage when they are found guilty of having committed assault and used criminal force upon public officers. It was for the accused to have refrained from committing this offence if they really cared to maintain their credit in the business circles. This consideration, therefore, urged by Mr. Jethmalani cannot be taken into account. In our opinion, mere sentence of fine in cases such as this where public officers are obstructed in discharge of their public duties thereby hampering the public administration is not at all adequate. The kind of offence that has been committed and proved in this case is a serious one from the point of view of public administration as well as from the point of view of the safety of officers who are in charge of public administration. Members of the public - businessmen or otherwise - cannot be permitted to interfere with the working of the Government machinery. It is not too late to realise that as from the date of the Constitution the Government which is run in this country is the Government of the people, for the people and by the people themselves. It is the duty of the members of the public, whether businessmen or otherwise, to co-operate with the officers of the Government in discharge of their lawful duties. Law and order have got to be maintained, and if any member of the public trifles with law and order, he must necessarily be dealt with harshly. In the circumstances of this case, as stated above, we regard this offence as a serious one. But as urged by Mr. Jethmalani, this being the first offence of its kind on the part of the accused, we do not desire to be unduly harsh in the matter of sentence. We must, however, consider all the circumstances of the case and mete out such sentence which should meet the ends of justice.

26. Accused No. 1 has been sentenced to pay a fine of Rs. 250 only. On the evidence, we have found that he was the man out of all the 4 accused who actually took up the cudgels and disputed the authority of the officers to enter

the flat and seize the books, although he was shown the authority at least of Sidhwani in his favour. It was he who actually started the mischief and the others callously joined him therein. In the result all the 4 accused assaulted all the four officers and bodily lifted them up and put hem out of the flat. In our opinion, therefore, accused No. 1 cannot possibly escape a substantive sentence of imprisonment. We would inflict a sentence of rigorous imprisonment for fifteen days on accused No. 1 and maintain the fine as well as the sentence of imprisonment in default imposed by the learned Magistrate. As regards accused Nos. 2, 3 and 4, the amount of fine imposed by the learned Magistrate is only Rs. 100. We enhance the sentence of fine to a fine of Rs. 250 each, in default rigorous imprisonment for three weeks. The application by the State is, therefore, allowed and the rule is made absolute. Warrant of arrest to be issued against accused No. 1. We grant him time to surrender till Tuesday, 22nd November, 1960.

27. Ordered accordingly.