(1958) 12 AP CK 0008

In the Andhra Pradesh High Court

Case No : Criminal Revision Case No. 667 of 1957 and Criminal Revision Petition No. 530 of 1957

Thathineni Subba Rao — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 15-12-1958

Acts Referred:
Penal Code, 1860 (IPC) — Section 353, 96, 99

Citation : AIR 1960 AP 110

Hon'ble Judges : Sanjeeva Row Nayudu, J

Bench : Single Bench

Advocate : G. Krishna Reddy, for S. Venkata Reddy, for the Appellant; D. Sivarama Krishna, for R.V. Rama Rao, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Sanjeeva Row Nayudu, J.—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 rot 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 mill had a gunny bag under his legs which contained some account books at the time of the offence in question, that is, on 22-12-56 at about 12-30 p.m. P. W. 1 is a Commercial Inspector on general duty whilst P. W. 2 claims to be 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 the 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 instigation 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 evasions 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.

3. 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.

4. 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 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.

5. The accused not having committed any offence, the conviction and sentence are illegal and consequently are quashed. The fine, if paid, will be refunded.

