HAZARI LAL

v.

STATE OF BIHAR

1962

September, 27.

(JAFER IMAM, N. RAJAGOPALA AYYANGAR and J. R. MUDHOLKAR, JJ.)

Criminal Trial—Criminal force—Use of, to deter public servant from discharging duty—Tax Officer inspecting account books—Snatched by accused—If offence made out—Act constituting offence under Sales Tax law also—Prosecution under Penal Code, whether, colourable—Bihar Sales Tax Act, 1947 (Bihar XIX of 1947), ss. 17, 26 (1) (h)—Indian Penal Code, 1860 (Act XLV of 1860), ss. 349, 350, 353.

The Assistant Superintendent of Commercial Taxes paid a surprise visit to the shop of the appellant where he found two sets of account books. He took them up and started looking into them. The appellant snatched away both the books. An attempt by the orderly peon of the Assistant Superintendent to recover the books was foiled by the appellant. The appellant was tried and convicted for an offence under s. 353 of the Penal Code for using criminal force to deter a public servant from discharging his duty.

Held, that the appellant was properly convicted under s. 353 Penal Code. The snatching of the books amounted to use of force; the snatching necessarily caused a jerk to the hands of the officer which caused motion to his hands within the meaning of s. 349 of the Penal Code. The Officer was entitled under the Bihar Sales Tax Act, and the Rules to pay a surprise visit to the shop of the appellant without giving him any notice and the appellant was bound to show him his account books. The officer was lawfully in possession of the account books and the appellant had no justification to snatch them away. The officer was naturally annoyed at this and accordingly the act of the appellant amounted to use of criminal force.

A seizure of the books under s. 17 of the Sales Tax Act would be valid only if the reasons for the seizure were recorded by the officer. But the present case was not one of seizure. Merely holding books found lying in a shop for perusing them does not amount to their seizure.

Prahlad Ram v. *State*, (Patna High Court, unreported), distinguished.

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The act of the appellant amounted to an offence under s. 26 (1) (h) of the Sales Tax Act also and for his prosecution under that section sanction of the Commissioner would have been necessary. His act was an offence both under that section and under s. 353 of the Code. He could be prosecuted for either or both these offences. The offence under s. 353 of the Penal Code was a graver offence than the one under s. 26 (1) (h) and in choosing to prosecute the appellant under s. 353 the prosecution could not be charged with acting colourably to obviate the necessity of obtaining the sanction.

Sonelal Seth v. *State*, (Patna High Court, unreported), disapproved.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeals Nos. 35 and 36 of 1961.

Appeals by special leave from the judgments and orders dated November 1 and September 1960 of the Patna High Court in Cr. Revisions Nos. 812 of 1960 and 76 of 1959 respectively.

Sarjoo Prasad and *K. K. Sinha*, for the appellants.

S. P. Varma, for the respondents.

1962. September 27. The Judgment of the Court was delivered by

Mudholkar, J.

MUDHOLKAR, J.—This is an appeal by special leave from the judgment of the High Court of Patna upholding the appellant's conviction under s. 353, Indian Penal Code and the sentence passed against him.

The facts which are not in dispute are as follows :

On the evening of October 29, 1957, Mr. Bhupendra Narain Singh, Assistant Superintendent of Commercial Taxes, Patna Sadar circle, paid a surprise visit to the shop of Hazari Lall & Co., in Barah town in order to inspect the books of accounts

maintained by the shop. At that time the appellant Hazari Lall was in the shop. Mr. Singh found that two sets of account books were kept in the shop. He took them up and started looking into them. The appellant snatched away both the books from him, passed them on to one of his servants who made them over to another servant who was on the upper floor. Mr. Singh directed his orderly peon to recover the books. The peon was, however, prevented by the appellant from going to the place where the account books had been taken and in the scuffle which ensued between the two, the orderly's shirt was torn. Thereafter Mr. Singh went to the police station to lodge a complaint. The appellant who was brought there by the Sub-Inspector, tendered an apology in writing and so Mr. Singh did not lodge a complaint. He, however, submitted a report in writing to the Superintendent of Commercial Taxes. The Superintendent thereupon reported the incident to the Deputy Superintendent of Police and eventually lodged a first information report on November 1.

It is urged before us by Mr. Sarjoo Prasad, who appears for the appellant, that mere snatching away of books does not amount to using force as contemplated by s. 349, I. P. C. and at any rate it does not amount to use of criminal force as contemplated by s. 350, Indian Penal Code. If, therefore, the act of the appellant did not constitute the use of criminal force, his conviction under s. 353, I. P. C. cannot be sustained. His contention is that no force was used against the person of Mr. Singh and, therefore, the requirements of s. 349, I. P. C, were not satisfied. Section 349, I. P. C. reads thus :

> "Force.—A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that

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substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling :

Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described :

First.—By his own bodily power.

Secondly.—By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

Thirdly.—By inducing any animal to move, to change its motion, or to cease to move."

It would be clear from a bare perusal of the section that one person can be said to have used force against another if he causes motion, change of motion, or cessation of motion to that other. By snatching away the books which Mr. Singh was holding the appellant necessarily caused a jerk to the hand or hands of Mr. Singh in which he was holding the books. His act, therefore, may be said to have caused motion to Mr. Singh's hand or hands. Further, the natural effect of snatching the books from the hand or hands of Mr. Singh would be to affect the sense of feeling of the hand or hands of Mr. Singh. We have, therefore, no doubt that the action of the appellant amounts to use of force as contemplated by s. 349, I. P. C.

Mere use of force, however, is not enough to bring an act within the terms of s. 353, I.P.C. It has further to be shown that force was used intentionally to any person without that person's consent in order

to commit an offence or with the intention or with the knowledge that the use of force will cause injury, fear or annoyance to the person against whom the force is used. The contention of Mr. Sarjoo Prasad is that the appellant did not intend to commit any offence but only wanted to retrieve his own property of which Mr. Singh had taken possession without his permission. He also contended that the appellant's act has admittedly caused no injury or fear to Mr. Singh nor can it be said to have caused any justifiable annoyance to him. We cannot accept Mr. Sarjoo Prasad's contention that the appellant did not cause annoyance to Mr. Singh by snatching away the books from his hands nor do we accept his contention that the action of the appellant does not amount to an offence.

The contention of Mr. Sarjoo Prasad that Mr. Singh could not inspect the account books without the permission of the appellant ignores the provisions of s. 17 of the Bihar Sales Tax Act, 1947 (Bihar XIX of 1947) and r. 50 of the Rules framed under the Act. Sub-section (2) of s. 17 of the Act provides that all accounts, registers and documents relating to stocks of goods or purchases, sales and deliveries of goods by any dealer and all goods kept in any place of business of any dealer shall at all reasonable times be open to inspection by the Commissioner. It is common ground that the Commissioner is authorised by law to delegate his power to his subordinates and it is not disputed that such power has been delegated to the Assistant Superintendent of Commercial Taxes. Sub-section (4) of s. 17 further empowers the Commissioner to enter and search any place of business of any dealer. Under his delegated power the Assistant Superintendent of Commercial Taxes, therefore, has the right to enter a place of business. Rule 50 deals with inspections. That rule empowers the Commissioner in his discretion to pay a surprise visit to the business premises of a dealer for inspection of the

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accounts, registers, documents, stocks and goods of such dealer though the normal procedure is that he should give reasonable notice in writing to the dealer of his intention to make an inspection. Therefore, though Mr. Singh had not given any notice of his intention to visit the shop of the appellant, he was entitled to pay a surprise visit. Mr. Singh paid such a surprise visit evidently because he suspected that the appellant was maintaining a double set of account books. In view of the fact that the law confers a power upon the Sales Tax authorities to inspect account books of a dealer and for that purpose even pay surprise visits to the shop of the dealer it would follow that there is an obligation on the dealer to allow the authorities to inspect his books of account. No permission from him, express or tacit, for that purpose is necessary. Mr. Singh was, therefore, lawfully in possession of the account books when he took them up in the shop and started perusing them. The appellant had no justification in law to snatch the books of accounts. To feel annoyed at this action of the appellant would be the natural reaction of Mr. Singh and, therefore, the appellant's act must be held to amount to use of criminal force. We are further clear that the appellant's act in snatching away the books amounts to obstruction of an officer making an inspection, which act is made punishable by s. 26(1)(h) of the Act.

Mr. Sarjoo Prasad then referred to the prosecution allegation that Mr. Singh, after being deprived of the possession of account books, directed his peon to retrieve them and said that the real object of Mr. Singh was to seize the account books under s. 17. He added that this is made further clear from the following passage in the report made by Mr. Singh to his superior.

> "From the statement given above, it is clear that Sri Hazari Lall, proprietor of M/s. Hazari Lall & Co., has deliberately obstructed me from

seizing the double sets of accounts which were found in his business premises. He had further assaulted my peon in his business premises besides snatching away the double sets of accounts as referred above. He has thereby committed offence punishable under law."

His first contention is that Mr. Singh had in fact seized the account books or had picked them with the object of seizing and as he had not complied with the requirement of sub-s. (3) of s. 17, that is, of recording his reasons in writing for making a seizure of the books, his act was, illegal and the appellant was justified in resisting the seizure. In support of his contention he relied on the unreported decision of Patna High Court in *Prahlad Ram* v. *State*(1). In that case account books had been seized by a Superintendent of Commercial Taxes from the premises of a dealer for the purpose of inspecting them and it was held that the seizure was illegal because he had not recorded in writing his reasons for making the seizure as required by sub-s. (3) of s. 17 of the Act. The dealer and some of his employees were convicted of an offence under s. 353, I. P. C. The High Court acquitted them on the ground that they were entitled to use force as the search of the premises and the seizure of the books was illegal. That case is distinguishable from the present one. Mr. Sarjoo Prasad, however, contends that here also Mr. Singh had taken possession of the account books and he must be deemed to have seized them. In our opinion merely holding books found lying in the premises for perusing them cannot properly be regarded as seizure because seizure implies doing something over and above holding an article in one's hand. According to the Shorter Oxford Dictionary, seizure, among other things, means ".....confiscation or forcible taking possession (land or goods); a sudden and forcible taking hold." As already stated, Mr. Singh merely picked up the books which were lying in the shop and did not snatch

(1) Cri. Revision No. 824 of 1960 decided on October 6, 1960.

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them away from anyone nor did he take them by force. On the contrary they were taken away by force by the appellant. If, indeed, he had retrieved them by force it may have been possible to urge that that latter act of his amounts to seizure. The case, therefore, does not help learned counsel.

He next contended that the only offence which the appellant has committed was one under s. 26(1) (h) of the Act and that as no previous sanction of the Commissioner had been obtained for launching the prosecution the trying Magistrate was precluded by the provisions of sub-s. (2) of s. 26 from taking cognizance of the alleged offence. Undoubtedly had the appellant been prosecuted for obstructing Mr. Singh from inspecting or seizing the account books, the trying Magistrate would have been incompetent to take cognizance of the offence without the previous sanction of the Commissioner. The appellant is, however, not being proceeded against for that offence but only for the offence under s. 353, I. P. C. for which no sanction is required. Learned counsel contends that the whole object of the prosecution is to get round the provisions of sub-s. (2) of s. 26 and that that is why the prosecution was launched under s.353, I. P, C. The suggestion apparently is that the prosecution of the appellant for the offence under s. 353 is merely colourable. Whether Mr. Singh was obstructed while making an inspection of the account books or which he was intending to seize them, the Commissioner's sanction would certainly have been required under sub-s. (2) if in fact the appellant was prosecuted specifically for obstructing Mr. Singh. He could have been prosecuted for these offences even without proof of the fact that he had used criminal force. From the facts found it would no doubt appear that the appellant has committed an offence under s. 26 (1) (h) of the Act as also under s. 353, I. P. C. because he has used criminal force. He could be prosecuted for either or both these offences at the discretion of

the prosecution. It may be that he was not prosecuted in respect of both the offences and the prosecution was restricted to the offence under s. 353, I. P. C. only to obviate the necessity of obtaining the Commissioner's sanction. Even so. the prosecution cannot be said to have done something which is unwarranted by law. An offence under s. 353, I. P. C. is a graver offence than the one under 26 (1) (h) of the Act because it is punishable with imprisonment for a period up to two years or to payment of fine without any limit, or both, whereas an offence under s. 26(1) (h) is punishable with imprisonment which may extend up to six months or with a fine not exceeding Rs. 1,000/-, or both. In choosing to prosecute the appellant for a graver offence under the general law the prosecution cannot be regarded as having acted colourably.

Section 26 (1) (h) of the Act deals only with one kind of obstruction and no more. But there may be an obstruction which may involve graver consequences to the officer obstructed such as grievous hurt or even death. It would lead to startling results if it were to be held that the prosecution acted colourably in not restricting the accusation to a minor offence requiring sanction. For, if the prosecution were to be so restricted, grave offences will go unpunished. Surely, that is not what the legislature could ever have intended when it enacted s. 26 of the Act. It makes little difference if the prosecution decided to proceed with respect to a graver offence and ignore one which is of a comparatively minor character.

Mr. Sarjoo Prasad relied upon an unreported decision of the Patna High Court in support of his aforesaid contention. That is the decision in *Sonelal Seth* v. *The State* (1). There the question which arose for consideration was whether an act of the kind proved in the case before us falls under s. 353, I.P.C., Das, J., who decided the case held that it does not. The reason given by him is that the definition

(1) Patna High Court, unreprted.

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of criminal force contained in s. 353, I.P.C. shows that what is contemplated by the section is the use of criminal force to or against a person and not to an inanimate object. He then observed :

> "It is true that in certain circumstances criminal force used to an inanimate object may result in the use of criminal force to a person also; that is made clear by illustrations (a) and (b) to section 350, Indian Penal Code. In the particular case before me, no force appears to have been used to the Inspector of Sales Tax at all. I doubt whether in the circumstances of this case it can be said that criminal force was used to the Inspector of Sales Tax. In my opinion, it would be over-taxing ingenuity to bring the act of the petitioner within the mischief of criminal force, as defined in section 350 of the Indian Penal Code."

The learned Judge went on to observe that a more straightforward course would have been to prosecute the accused under s. 26 of the Sales Tax Act. With respect, we may point out that the learned Judge has omitted to consider the words "change of motion or cessation of motion to that other....." Had the learned Judge borne these ingredients in mind he would no doubt have considered the effect of snatching away the books from the hands of the officer in that case. In the circumstances we find it difficult to agree with the conclusion of the learned Judge. We also do not agree with the suggestion implicit in the concluding part of his judgment that where the facts disclose an offence under s. 26 of the Bihar Sales Tax Act resort should rather be had to the provisions of that section than to the general law even if the act amounts to an offence under the general law. We are, therefore, unable to accept his view. We, therefore, dismiss the appeal.

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Along with this appeal Criminal Appeal No. 35 of 1961 was also heard and this judgment will govern the decision of that appeal also. There the facts are slightly different only in one respect, in that the account book which was snatched away from the hands of the Assistant Superintendent of Commercial Taxes was in the process torn, part of it remaining in the hands of the Assistant Superintendent and a part in the hands of the dealer who snatched it away. Apart from that, there is no difference and the points which were urged before us were identical. For the reasons given by us we dismiss this appeal also.

Appeals dismissed.

STATE OF MADHYA PRADESH

v.

PEER MOHD. & ANOTHER.

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September, 28.

(B. P. SINHA, C. J., P. B. GAJENDRAGADKAR, K. N. WANCHOO, K. C. DAS GUPTA and J. C. SHAH, JJ.)

Citizenship—Foreigner—Indian going to Pakistan after Constitution—Return on Pakistani passport—If ceases to be citizen of India—Constitution of India, Art. 7—Citizenship Act, 1955 (57 of 1955).

The respondents who were citizens of India left India for Pakistan sometime after January 26, 1950. They returned to India in 1956 on the strength of a Pakistani passport and visa. They continued to stay in India even after the period of the visa had expired and were prosecuted under s. 14 Foreigners Act, 1946, read with cl. 7 Foreigner's Order, 1948, for unauthorised and illegal overstay in India. The High Court acquitted them holding that they had not become foreigners on account of their leaving India after January 26, 1950, and the question whether they had lost their Indian citizenship on account of acquisition of Pakistani citizenship could not be agitated before a court of law. The appellant contended that in view of Art. 7 of the Constitution the respondents could