

SHEONATH PRASAD & ORS.

A

v.

STATE OF BIHAR

April 30, 1968

B

[S. M. SIKRI AND R. S. BACHAWAT, JJ.]

Bihar Sales Tax Act 1947, s. 2(1) and s. 17—Power of inspection, search and seizure under s. 17—'Place of business', definition of—Whether only premises declared by the dealer to be place of business under Act and Rules to be treated as such.

Criminal Procedure Code, ss. 165(4) and 103—Exercise of powers under s. 17 whether attracts provisions.

C

The first appellant's premises were raided by the Superintendent of Commercial Taxes (Intelligence Branch) exercising the powers of Assistant Superintendent of Sales Tax. He found a duplicate set of accounts being prepared there and took the various account books into his possession. The appellant along with others came and snatched away the bundle containing the account books. The Assistant Sessions Judge as well as the High Court found that the inspection, search and seizure had been made by the Superintendent of Commercial Taxes in purported exercise of his powers under s. 17 of the Bihar Sales Tax Act, 1947. One of the offences charged against the appellants was that of dacoity under s. 395 I.P.C. While the Assistant Sessions Judge acquitted the appellants of this offence the High Court convicted them and sentenced them to two years' R.I. for it. In appeal to this Court it was contended : (i) that the power of inspection seizure and search under s. 17 can be exercised only in a place of business declared by the dealer under the Act and the Rules and as the place from where the accounts books were seized in the present case was not a place so declared, the inspection, search and seizure were illegal; (ii) that the search was made by the Superintendent in the course of an investigation of a cognizable offence, and as there was a contravention of s.165(4) read with s. 103 of the Criminal Procedure Code the search and seizure were illegal; (iii) that the sentences should be mitigated.

D

E

F

HELD : (i) The dealer kept accounts of sales at the place from where they were recovered. Therefore under the definition in s. 2(1) of the Bihar Sales Tax Act the said place was a place of business, and could be lawfully searched by the Superintendent under s. 17 read with s. 18 of the Act. The power of inspection search and seizure under s. 17 is not limited to a place of business declared by a dealer in his application for registration or otherwise and it can be exercised in respect of any and every place of business. [154 D—G]

G

(ii) In the present case the Superintendent was only exercising powers under s. 17 and was not investigating or dealing with any cognizable or other offence. The provisions of s. 165(4) read with s. 103 of the Criminal Procedure Code were therefore not attracted and he was not required to comply with those provisions. [155 B—C]

H

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 189 of 1965.

A Appeal by special leave from the judgment and order dated September 22, 1965 of the Patna High Court in Government Appeal No. 40 of 1962 with Cr. Revision No. 122 of 1963.

A. S. R. Chari, Surendra Prasad and D. Gobardhun, for the appellants.

B *R. K. Garg* for *D. P. Singh*, for the respondent.

The Judgment of the Court was delivered by

Bachawat, J.—Nine persons were tried for various offences by the 3rd Assistant Sessions Judge, Patna. The Judge acquitted Ramnath and Madan of all the charges. He convicted Sheonath, Matukdeo and Sarjoo under sec. 353 of the Indian Penal

C Code and sentenced them to pay a fine of Rs. 1000 each or in default to suffer imprisonment for six months. He convicted Satnarayan, Billat, Gullat and Bishwanath under sec. 353 read with sec. 149 and sentenced them to pay a fine of Rs. 200 each or in default to suffer simple imprisonment of three months. He

D convicted all of them under sec. 147 but did not pass a separate sentence under it. He acquitted all of them of the charge under sec. 395. The State of Bihar filed an appeal and a revision petition for enhancement of the sentence. The High Court allowed the appeal and revision petition in part. It convicted Sheonath, Matukdeo and Sarjoo under sec. 395 and sentenced them to undergo rigorous imprisonment for two years each, enhanced the sentences already imposed on them under sec. 353

E by adding a sentence of two years rigorous imprisonment against each of them and directed that the substantive sentences of imprisonment would run concurrently. It convicted Satnarayan, Billat and Gullat of offences under sec. 395 and sentenced them to undergo rigorous imprisonment for one year each, enhanced the sentences imposed upon them under sec. 153/149 by adding

F sentences of one years rigorous imprisonment against each of them and directed that the substantive sentences of imprisonment would run concurrently. It acquitted Bishwanath of all the charges. Sheonath, Matukdeo, Sarjoo, Satnarayan, Billat and Gullat have filed this appeal after obtaining special leave from this Court.

G The courts below have found the following facts : Maheshwar Datta Sharma was the Superintendent of Commercial Taxes (Intelligence Branch) exercising the powers of Assistant Supdt. of Sales Tax. He received information that the firm of Mohanlal Sitaram was maintaining incorrect account books at its secret gaddi at Adrakhghat, Marufganj in Patna City. In the afternoon of May 7, 1959 he with a party of officers and inspectors of the Sales Tax Department raided the premises. After posting guards at the entrance and with the rest of the party he went upstairs. In the eastern room he found the munims Sarjoo Prasad

H

and Matukdeo writing books of account. On an examination of the books of account and papers he found that double sets of books of account with discrepant and incorrect entries were being maintained with a view to evasion of sales tax. He seized the books and papers and packed them in a gunny bag. A seizure list was prepared. A copy of the list was offered to Matukdeo who refused to accept it. In the meantime a mob with the common intention of snatching away the seized books of account came upstairs. At the sight of the mob Sharma and some members of the party bolted the door of the closed verandah. Gullat, Billat and Satnarayan and other members of the mob attempted to break open the door of the verandah. Sharma and his party then went inside the central room with the bag containing the seized accounts books and bolted the door from inside. The mob broke open a door of the eastern room and went inside to the central room. There Sheonath, Matukdeo and Ramnath snatched away the bag from the possession of Sharma. It may be mentioned that Sheonath was the proprietor of the firm. These findings of fact are not challenged by Mr. Chari.

The courts below found that the inspection, search and seizure were made by Sharma in the exercise of his powers under sec. 17 of the Bihar Sales Tax Act, 1947. Mr. Chari attacked this finding. He contended that (1) the power of inspection, seizure and search under sec. 17 of the Bihar Sales Tax Act, can be exercised only in a place of business declared by the dealer under the Act and the Rules and as the Gaddi at Adrakhghat was not such a place of business, the inspection, search and seizure were illegal and (2) that Sharma made the search and seizure in the course of an investigation of a cognizable offence, and as there was contravention of s. 165(4) read with s. 103 of the Criminal Procedure Code the search and seizure were illegal. He also pleaded for the mitigation of the sentences.

Our attention was drawn to the relevant provisions of the Bihar Sales Tax Act, 1947 and the Bihar Sales Tax Rules, 1949. Section 17 of the Act reads .

"Production and inspection of accounts and documents and search of premises :—

- (1) The Commissioner may, subject to such conditions as may be prescribed, require any dealer to produce before him any accounts or documents, relevant to the financial transactions of a dealer, including accounts or documents relating to profits derived from the business of any firm, or to furnish any information relating to the stocks of goods of, or purchases, sales and

A deliveries of goods by, the dealer as may be necessary for the purposes of this Act.

B (2) All accounts, registers and documents relating to the stocks of goods of, 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.

C (3) If the Commissioner has reason to suspect that any dealer is attempting to evade the payment of any tax due from him under this Act, he may, for reasons to be recorded in writing seize such accounts, registers or documents of the dealer as may be necessary, and shall grant a receipt for the same, and shall retain the same only for so long as may be necessary for examination thereof or for a prosecution.

D (4) For the purposes of sub-section (2) or sub-section (3) the Commissioner may enter and search any place of business of any dealer."

E Section 3 empowers the State Government to appoint any person to assist the Commissioner of Sales Tax. Section 9 provides for registration of dealers. Section 11 provides for publication of the list registered dealers. Section 18 authorises the State Government to delegate the powers of the Commissioners to any officer appointed under sec. 3 to assist him. Sec. 19 requires a registered dealer or any other dealer to whom a notice is served under sec. 12(1) to give information of any change of his place of business or the opening of a new place of business.

F The maintenance of incorrect accounts is a cognizable offence punishable under sec. 26(1)(g). Under sec. 27 the Commissioner may authorise any person appointed to assist him under sec. 3 to investigate offences punishable under the Act. Any person so authorised is required in the conduct of such investigation to exercise the powers conferred by the Criminal Procedure Code upon an officer in charge of a police station for the purpose of investigation of a cognizable offence. Rule 2(1) defines "place of business" to mean any place where a dealer sells goods or keeps accounts of sales. Rule 3 provides that an Assistant Commissioner of Sales Tax and a Superintendent of Sales Tax may be appointed under sec. 3(1) to assist the Commissioner. Rule 4 provides that an application for registration shall be in Form 1.

G The proviso to Rule 4 provides that a dealer other than a dealer registered under r. 10(1) having more than one place of business shall make a separate application in respect of every such place. Rule 10(1) provides for registration of dealers in special circum-

H

stances. Form 1 requires the dealer to state the location of the place of business for which the application is made, a complete list of warehouses in respect of the place of business and a complete list of other places of business of the dealer for which a separate application has been or will be made. Under Rule 5 a certificate of registration is issued in Form II. That form gives the location of the place of business, and warehouses of the dealer. Rule 11 provide for publication of lists of registered dealers. The lists give the location of their places of business.

It is to be noticed that in the application for registration a dealer is required to disclose his place of business. The place of business disclosed by him is mentioned in the certificate of registration and the list of registered dealers. But the Act and the Rules no where say that if he has some other place of business, such place cannot be regarded as a place of business. On the contrary, rule 2(1) defines "place of business" to mean any place where a dealer sells goods or keeps accounts of sales. The dealer Mohanlal Sitaram kept accounts of sales at his secret gaddi at Adrakhghat. The gaddi was therefore a place of business of the dealer. The Commissioner could inspect the books under s. 17(2) seize them under s. 17(3) and enter and search the place under s. 17(4). The power of the Commissioner under sec. 17 was delegated to Sharma under sec. 18. He could therefore lawfully exercise those powers. We see no ground for holding that the power under sec. 17 can be exercised only in relation to a place of business declared by the dealer in his application for registration. It is the duty of the dealer to declare all his places of business. If he has more than one place of business he is required to disclose them and to make a separate application for every such place. If he changes the place of business or opens a new one he is required to give information to the prescribed authority. The non-disclosure of a place of business does not make that place immune from entry and search under sec. 17. The power under sec. 17 can be exercised in relation to any dealer whether registered or unregistered. An unregistered dealer is not exempt from the operation of s. 17 though he made no application for registration declaring his place of business. We are of the opinion that the power of inspection, seizure and search under sec. 17 is not limited to a place of business declared by a dealer in his application for registration or otherwise and that it can be exercised in respect of any and every place of business. When a certain place is declared by the dealer as his place of business he cannot be heard to say at a later stage that it is not his place of business. If the Commissioner enters and searches any other place, he does so at his own peril. If it turns out that that place is not the place of business of the dealer the Commissioner will be guilty of trespass.

A

B

C

D

E

F

G

H

- A** We are not satisfied that Sharma made the search and seizure in the course of an investigation of a cognizable offence. Sharma stated that he was not authorised by the Commissioner under s. 27 to investigate an offence. That is why he did not reduce to writing the information given to him that the dealer was maintaining incorrect accounts and did not require the informant to
- B** sign a written information. Only the powers of the Commissioner under sec. 17 was delegated to Sharma. In making the inspection, search and seizure he was exercising the powers under sec. 17. He was not investigating or dealing with an offence. The provisions of sec. 165(4) read with sec. 103 of the Criminal Procedure Code were therefore not attracted and he was not required to comply with those provisions.
- C**

On the question of sentence, we find that both the courts have said that the offence of dacoity was a technical one. The appellants did not cause hurt to any member of the raiding party. The appellants have already undergone imprisonments for about a month. We think that the ends of justice will be met by reducing the sentences imposed by the High Court to the periods of imprisonments already undergone by the appellants.

- D**
- E** In the result, the appeal is allowed in part. The convictions of the appellants by the courts below including their convictions by the High Court under sec. 395 are affirmed. The sentences under sec. 395 and the enhanced sentences in respect of other offences imposed on the appellants by the High Court are reduced to the period of imprisonment already undergone by them. The sentences imposed on the appellants by the 3rd Assistant Sessions Judge, Patna, are maintained.

G.C.

Appeal partly allowed.