

REVISIONAL CRIMINAL

Before Harbans Singh, J.

PARSHOTAM DASS AND OTHERS,—*Appellants*

versus

THE STATE,—*Respondent*

Criminal Revision No. 1206 of 1963

Penal Code (Act XLV of 1860)—S. s. 186 and 353—East Punjab General Sales Tax Act (XLVI of 1948)—S. 14—Taxation Officer entering premises of a dealer and demanding books of account for inspection—Dealer refusing to produce books and asking officer to leave the premises—Officer insisting on seeing books but pushed out by dealer—Dealer whether commits any offence.

Held, that even if under sub-section (2) of section 14 of the East Punjab General Sales Tax Act, 1948, a Taxation Officer, in his capacity as an Assessing Authority, has a right to enter the premises and make a demand for inspecting the books of account without any

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previous notice, yet, if the dealer refused to show the books of account, he has no right to insist that he would see the books of account and the same should be produced and thus make a nuisance of himself. As soon as the dealer refuses to show the books, he may become liable to penalty detailed in sub-section (1) of section 23, but he (the Taxation Officer) has no further right to remain on the premises after he has been told, in clear terms, that the books of account are not going to be shown to him, for whatever reason and he has further been asked to leave the premises. Thereafter the Taxation Officer would be in the position of a trespasser if he remains on the premises and insists on the books of account being shown to him. If, in such circumstances, the dealer pushes out the Taxation Officer, he would be exercising his right of private defence and would not be committing any offence under section 353 and 186 of the Indian Penal Code.

Petition under section 439 of the Code of Criminal Procedure for revision of the order of Shri E. F. Barlow, Sessions Judge, Karnal, dated the 18th September, 1963, modifying that of Shri G. S. Aggarwal, Magistrate, 1st Class, Karnal, dated the 22nd July, 1963, convicting the appellants.

H. L. SIBBAL WITH B. R. AGGARWAL AND BANU RAM GUPTA, ADVOCATES, for the Appellants.

M. K. MAHAJAN, ADVOCATE, for the ADVOCATE-GENERAL, for the Respondent.

JUDGMENT

HARBANS SINGH, J.—This is a revision filed by Parshotam Dass, his partner Raj Kumar, and their two servants, Chander Bhan and Mohan Lal, against their conviction under sections 353 and 186, Indian Penal Code, and sentence of three months' rigorous imprisonment on the first charge and one month's rigorous imprisonment and a fine of Rs. 100 on the second charge each (as reduced on appeal by the learned Sessions Judge, Karnal).

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Parshotam Dass, is a partner in an establishment at Karnal, known as 'Pal Boot House'. In the adjoining premises business is carried on under the name and style of 'Liberty Footwear Company', in which also Parshotam Dass, is a partner along with some other persons. A return under the Punjab General Sales Tax Act, 1948, had been submitted by the Liberty Footwear Company. Parshotam Dass, or his partners had appeared before the

Parshotam Dass Assistant Excise and Taxation Officer (hereinafter referred
 v. to as the Taxation Officer) on a number of hearings and
 The State of had produced before him their books of account. On the
 Harbans Singh, 3rd of August, 1962, Shri Babu Ram Gupta, the Taxation
 J. Officer, along with the Taxation Inspector, Shri Nagina
 Singh and the Stenographer Shri Puran Mal, went to the
 shop of Pal Boot House at about 6.15 p.m. (according to
 the prosecution, though according to the defence the
 time was 6.45 p.m.). Parshotam Dass was present there at
 the desk and Shri Gupta asked him to show all the books
 of account of Liberty Footwear Company. He refused to
 do so. Shri Gupta insisted on seeing the books and told
 Parshotam Dass that it was in his own interest to pro-
 duce the books of account for his inspection. On this
 Parshotam Dass, lost his temper and used bad language and
 pushed him out of the shop. The other three accused
 joined him in giving the pushes and all the three mem-
 bers of the taxation staff were pushed out and the door
 of the shop was closed. Shri Gupta, then and there
 wrote the report (Exhibit P.A.) and sent it to the Station
 House Officer, City Police Station, Karnal, for registering
 the case. This is what he has stated in this report—

“I asked Shri Parshotam Dass to show me the
 account-books, on which he got enraged and
 furious and asked us to get out of the shop at-
 once, although he knew me by face and designa-
 tion. When I insisted for the production of the
 account-books to enable me to perform my
 duties, he threatened to kill me and thereafter
 with the help of Raj Kumar and two other
 employees pushed us out physically and uttered
 filthy abuses to all of us. He did not thus
 allow me to conduct the inspection, which I
 was lawfully entitled to do, and thus he inter-
 fered with the official discharge of my duties.
 Immediately thereafter they locked the shop
 and went away”.

After investigation the accused were charged under
 sections 353 and 186, Indian Penal Code. Parshotam Dass
 was also charged under section 23(i)(f) of the East
 Punjab General Sales Tax Act, 1948. The trial Court
 convicted all the accused under sections 353 and 186,

Indian Penal Code. Parshotam Dass was also convicted under section 23(1)(f) of the East Punjab General Sales Tax Act, 1948. This latter conviction was set aside by the learned Sessions Judge on appeal, while the convictions under the other counts were upheld with the sentences as reduced above.

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The position taken up by Parshotam Dass was that Liberty Footwear Company and Pal Boot House were two distinct firms with different partners and different premises, though he was a partner in both and the premises of both were contiguous. He had produced the books of account before the Taxation Officer on several hearings and his partner Dharam Pal had actually attended on the 23rd of August, 1962, the office of the Taxation Officer. On the date in question at about 6.45 p.m., when he was present at the Pal Boot House and was winding up the day's work and the workmen of the Liberty Footwear Company were closing the shop (because the closing time was 7 p.m.), the Taxation Officer, accompanied by the two officials, came there and started examining the books lying at the table. He then asked him to produce the books of Liberty Footwear Company, but the accused told him that they were not available there, i.e., on the premises of Pal Boot House, that he was in a hurry and that if the officer specified the books he required he will produce the same the following day. Shri Gupta, however, insisted on the production of books then and there and on being refused he became furious and started saying that the businessmen were dishonest and did not know how to behave towards the officers and that he had power to ruin them. Exception was taken to these threats and he was told to leave the premises, and take any legal action that he may deem fit and that he should permit him to close the shop as it was closing time. On this Shri Gupta, went away threatening the accused to teach him a lesson for his rudeness.

Before me only one point was argued on behalf of the petitioners, viz., that even if under sub-section (2) of section 14 of the East Punjab General Sales Tax Act, 1948, a Taxation Officer in his capacity as an Assessing Authority has a right to enter the premises and make a demand for inspecting the books of account without any previous

notice, yet, if the dealer refuses to show the books of account, he has no right to insist that he would see books of account and the same should be produced and thus make a nuisance of himself. As soon as the dealer refuses to show the books, he may become liable to penalty detailed in sub-section (1) of section 23, but he (the Taxation Officer) has no further right to remain on the premises after he has been told in clear terms that the books of account are not going to be shown to him, for whatever reason and he has further been asked to leave the premises. It was urged that, thereafter the Taxation Officer would be in the position of a trespasser if he remains on the premises and insists on the books of account being shown to him.

Sub-sections (2) and (3) of section 14 run as follows:—

“(2) All accounts, registers and documents relating to the stocks of goods of, or purchase, sale and deliveries of goods by any dealer, and all goods kept in any place of business or warehouse of any dealer shall at all reasonable times be open to inspection by the Assessing Authority and that Authority may countersign any or all of such accounts, registers and documents.

(3) For the purposes of sub-section (2), the Assessing Authority may enter any place of business or warehouse of any dealer;

* * * * *

Relevant portion of sub-section (1) of section 23 is—

“Whoever refuses to comply with any requirement made of him under section 14, shall be punishable with fine not exceeding one thousand rupees, and when the offence is a continuing one, with a daily fine not exceeding fifty rupees during the period of the continuance of the offence”.

Reading these provisions together, it appears that the contention of the learned counsel has force. There is no provision authorising any officer to make a search of the

premises or to take any other action against a dealer, who refuses to produce the books of account for the inspection of the Assessing Authority. Consequently though the officer concerned is authorised to enter the premises with a view to inspect the accounts, registers etc., under sub-section (2) of section 14, yet if the dealer refuses to produce those registers, etc., the officer concerned cannot insist on such books of account being produced if his request is not complied with: He can only prosecute the dealer.

We have not to examine the evidence in order to see what were the facts. As found by the Courts below and there is ample evidence for this finding the Taxation Officer had gone to the premises of Pal Boot House and he wanted the books of account of Liberty Footwear Company to be shown to him. Nagina Singh, Taxation Inspector in his cross-examination states as follows:—

“There was no customer present at the shop. Parshotam Dass was sitting at his desk. There were some books and papers lying on his table. Shri Gupta, might have checked one bill book, but he was insisting for the production of *rokar and khata*. Shri Gupta, demanded the books of Liberty Footwear. Parshotam Dass did say that he has not got the books with them of Liberty Footwear. He also said that he would produce the books some other time if so desired, but A.E.T.O. insisted on seeing the books there and then. Parshotam Dass then lost temper * * * * Parshotam Dass did ask A.E.T.O. to go out of the shop, but Shri Gupta kept on insisting to show him the books”.

Puran Mal, Stenographer. stated in his examination-in-chief as follows:—

“When A.E.T.O. asked for the production of books, Parshotam Dass refused to produce the books and lost temper and used bad language”.

In cross-examination he again said as follow^s:—

“A.E.T.O. did ask Parshotam Dass to show the books of Liberty Footwear. Parshotam Dass told that he has not got the books of Liberty

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Footwear. The A.E.T.O. asked him to produce the books, and then Parshotam Dass lost temper”.

Earlier, it is in the statement of Shri Gupta—

“I asked Parshotam Dass to show me the accounts of his business. On this he got enraged. I again asked him to produce the account-books in their own interest and allow me to discharge my duties. No books were shown to me and they did not allow me to perform my duties. The accused closed the shop immediately and went away”.

On being recalled, he admitted that what he wanted to examine was some secret books which the assessee normally do not produce before the taxation authorities and thus evade tax. He further mentioned as follows:—

“Parshotam Dass did not tell me that the place where we had entered were the premises of Pal Boot House and not of Liberty Footwear. It is incorrect to suggest that Parshotam Dass told me that the books of that firm were not with him at the moment”.

From the above it is clear that although the Taxation Officer did not disclose whether he and his staff went to the shop of Pal Boot House or Liberty Footwear Company, yet the evidence of the other two leaves no manner of doubt that they had gone to the shop of Pal Boot House, but they wanted to see the books of account of Liberty Footwear Company. It is further clear that Parshotam Dass did tell them that he had not the books of account of Liberty Footwear Company with him at that moment and he further offered to produce those books at the time that may be suggested by the officer, but in spite of that, the Taxation Officer insisted to see the books then and there.

It appears that the Taxation Officer apparently felt that he was entitled to insist that books be produced before him and that it made no difference whether he had

gone to the Pal Boot House or the Liberty Footwear Company, because he considered both the firms to be the same, apparently because there was one license under the East Punjab General Sales Tax Act, in respect of the two firms. However, the statement of Parshotam Dass, that the books of Liberty Footwear Company were not available with him at Pal Boot House was a reasonable statement, though we are not really concerned whether his refusal to produce the books at that time was or was not justified. What is clear on the record is that when he (the Taxation Officer) asked for the books, Parshotam Dass, refused to produce the same. Further it appears that there must have been some sort of insinuation by the Taxation Officer, that the accused had kept some sort of secret books and consequently he wanted to see the books then and there. As already discussed, he had no power to make a search and if the firm had kept some secret books, they were certainly not going to produce them before him of their own accord. It is further clear that the closing time was almost near and if, after having a clear refusal from Parshotam Dass, and a hint from him that they were in a hurry and wanted to close the shop and that he should go away, the Taxation Officer still insisted on remaining on the premises, then apparently he had no right to do so and once the refusal was conveyed to him, his presence at the spot insisting on the books being produced would be as a trespasser. Possibly the Taxation Officer was trying to discharge what he considered to be his duty, i.e., forcing the dealer to produce all the books that he had, including his secret books, yet in insisting and staying on the premises he was technically guilty of trespass and if he was pushed out of the shop because it was near closing time or the dealer wanted to close his shop for whatever reason, I think Parshotam Dass or his co-accused cannot be said to have committed any offence. Reference in this respect was made to two cases. *Achhru Ram V. Emperor* (1), was in relation to the Income-tax Act, whereunder, as the law then stood, though an Income-tax Officer was empowered under section 22(4) to serve the proprietors of a firm with a notice to produce their accounts, yet there was no provision of law by which he could have insisted on their

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(1) A.I.R. 1926 Lah. 326.

Parshotam Dass producing the accounts if they declined to comply with the notice, and it was held—

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“He has no authority under the Act to enter the firm’s premises in order to inspect the accounts, or to remain on the premises for that purpose against the will of the proprietors, and if he does so he commits criminal trespass and the proprietors have a right to forcibly turn him out as section 99, Penal Code would not deprive them of their right of private defence”.

Subba Rao v. State of Andhra Pradesh (2), was the second case. Under the Andhra Pradesh General Sales Tax Act the Commercial Inspector specially appointed for the investigation of evasions could only inspect the accounts if produced before him. Where such an inspector forcibly removed account-books from the accused, who was a clerk of a mill, and “persisted in inspecting the accounts, which the accused attempted to prevent and in that attempt came to push the Inspector”, it was held that the action of the Inspector in forcibly seizing the books from a clerk of the mill was *ultra vires* of his powers and illegal and the accused and other employees in the mill had a right in law to resist such illegal actions in exercise of their general right of private defence and in pushing the Inspector they committed no offence. In the present case too I feel that the presence of the Taxation Officer on the premises of Pal Boot House, after the dealer had unequivocally refused to produce the Books of account of Liberty Foot-wear Company demanded from him and told him that those books were not with him, was illegal and even if it be taken to have been established that he was pushed out by the accused, they would be exercising their right of private defence.

So far as the conviction of Parshotam Dass, under section 23(1)(f) of the East Punjab General Sales Tax Act is concerned, he had already been acquitted on the technical ground that there was no proper sanction for his prosecution. For the reasons given above, I set aside the convictions and sentences of the accused under sections 353

and 1867 Indian Penal Code, and acquit them. They are on bail and need not surrender to their bail-bonds, which shall stand cancelled. Fine, if paid, shall be refunded.

B.R.T.