Shyam Lal Sharma, Etc.

Vs

State of Madhya Pradesh

Crimimal Appeals Nos. 80 and 81 of 1969

(P. Jagmohan Reddy, H. R. Khanna JJ)

09.02.1972

JUDGMENT

JAGANMOHAN REDDY, J. -

1. The appellants along with another accused, Narayan Singh, were convicted by the High Court under Sections 332, 353, 342 of the Indian Penal Code and were sentenced to one year's rigorous imprisonment on each count, the sentences to run concurrently. These two appeals are by special leave.

2. On May 26, 1965, Sardar Jagat Singh, owner of a lorry made an application to the Vigilance Commissioner, Bhopal Division that the appellant in Criminal Appeal No. 80/69 - Shyam Lal Sharma, Barrier Inspector at Village Multai, district Betul, has seized the licence of his Driver stating that if he has to pass from the Barrier, he should bring Rs. 5/- per trip or Rs. 40/- p.m. but the driver refused to pay him anything and has declined to go there as a result of which he is likely to suffer heavy loss. He, therefore, offered to give currency notes which may be signed and requested that a proper person may be given to him to arrest the Barrier Inspector Sharma and his staff and save him from the corruption. On this application, Circle Inspector Rana Ranjit Singh, P.W. 1 was asked to attend to it. Accordingly, he along with Jagat Singh, his driver and Panchas Hardeet Singh, P.W. 6 and Munna Lal, P.W. 7 proceeded to Multai Barrier by truck to arrange for a trap and catch the culprits red-handed. On arriving at the Barrier Gate, four currency notes of Rs. 10/- each were given by Jagat Singh, P.W. 2, to his driver who was sent to the Barrier office along with P.W. 6 and P.W. 7 to give the same, if demanded, and after they were accepted an agreed signal was to be given. Accordingly, the driver went to the Barrier office along with P.W. 6 Hardeet Singh and P.W. 7 Munna Lal and after the amount was received by accused Narayan Singh, P.W. 6 Hardeet Singh came out of the office and gave the agreed signal. Immediately, P.W. 1, Ranjit Singh proceeded to the office and when the accused Narayan Singh saw him coming, he felt suspicious, went inside the inner apartment of the office and concealed the notes under the over-coat lying there. As soon as P.W. 1 entered the office, the driver Jeet Singh informed him that the constable has concealed the notes under the over-coat in the inner apartment. P.W. 1 then disclosed his identity and after having his person searched, went inside the inner apartment and recovered the currency notes lying beneath the over-coat. The notes were seized and while he was preparing the Panchnama, accused Udho Prasad - appellant in Criminal Appeal No. 81/69 - arrived on the sense and started taking P.W. 1 to task for having entered his office without permission or reference to him. He then asked accused Narayan Singh not to sigh the seizure memo. While this alteration was going on, the accused Shyam Lal arrived there and he also reprimanded P.W. 1, and questioned his authority. Even though P.W. 1 asserted that authority was conferred upon him to make a search, accused Shyam Lal asked him to give him in writing that he had entered the Barrier office without the permission of the person

incharge otherwise he would not be allowed to go out. Shyam Lal also picked up the notes from the table but they were given back on the protest of P.W. 1. P.W. 1, then assured him that he would give the seizure memo and the writing to say that he searched at the Dak Bungalow opposite and that accused should accompany him. He was accordingly allowed and he then left the office without getting the signature of the accused Narayan Singh on the seizure Memo. But no sooner had P.W. 1 come out of the office on to the road, Udho Prasad again insisted on the writing being given whereupon Shyam Lal caught P.W. 1 by his waist and forcibly lifted him, took him to the Barrier office and threw him on a chair. The accused Udho Prasad asked accused Narayan Singh to take out a Danda so that these Police Officials raiding the office may be taught a lesson. Accused Shyam Lal insisted that unless P.W. 1 gives him then and there a copy of the seizure memo as also a writing to the effect that search was taken, the latter would not be allowed to leave the office. P.W. 1 faced with this situation could not but comply with the demand made by Udho Prasad and Shyam Lal. It is only after he had given in writing that he had made a search, he was allowed to return to the Dak Bungalow and that too when Misra, Station Officer, P.W. 8 who had come there went to telephone. Thereafter P.W. 1 gave a written information, Ex. P-4 on June 2, 1965, as follows :

> "It is submitted that today-at 7.25 a.m. I had arranged the trap at the traffic barrier Multai. After taking the search of the Barrier currency notes of Rs. 40/- were found beneath the over-coat. While I was recording the seizure-memo of these notes, Shri Sharma, Station Officer Traffic abused me and uttered bad words. Thereafter, he said to me, 'You have no powers of trap'. I repeatedly told him that recently the State Government have authorized the Circle Inspectors for trapping. But he did not agree and he created obstruction while I was discharging my duties. He grappled with me. This act of the Sub-Inspector traffic barrier falls under Section 353, Indian Penal Code. At that time many persons were present on the spot. Kindly offence be registered and challan be put up in the Court according to law."

3. We may here state, and it is not denied, that P.W. 1 did not record in writing the grounds of his belief that anything necessary for the purposes of investigation into any offence cannot in his opinion be obtained without undue delay which is a condition precedent to effect a search under Section 165, Cr.P.C. The Trail Court while accepting the evidence and holding that assault, wrongful resistant and wrongful confinement are proved against the appellants, nonetheless acquitted them because the provisions of Section 165, Cr.P.C., relating to search had not been complied with. On an appeal by the State, the High Court also accepted the prosecution case and agreed with the findings of the Trial Court but rejected the contention of the appellants that the search was illegal and entitled the appellants to obstruct and man-handle P.W. 1. In this view the non-observance of the provisions of Section 165, Cr.P.C., were held to be a mere irregularity as P.W. 1, was throughout conducting himself in an honest and bona fide manner in the discharge of his duties and the appellants were not justified in claiming the right of private defence. In this view, it reversed the order of acquittal and convicted the accused of the offences as aforesaid.

4. On behalf of the appellants it is contended that notwithstanding the findings of both the Courts that the appellants had wrongfully restrained and obstructed P.W. 1 and also assaulted and used criminal force against him, the several acts alleged against them do not constitute any offence as they had a right to obstruct a search made in contravention of the provisions of Section 165, Cr.P.C., which made the search illegal. It is accordingly submitted that when reasons are not recorded as required by Section 165 Cr.P.C., for making a search during investigation and as P.W. 1 did not, as required under Section 103, Cr.P.C., give a copy of the list of the currency notes seized from Narayan Singh to the Appellants, the entire investigation is vitiated and consequently any

obstruction caused in the subsequent process of investigation will not constitute any offence inasmuch as an investigation continues up to the date of filing a charge-sheet under Section 173.

5. There is, in our view, a fallacy in these submissions. That the investigation commenced when the information of a cognizable offence was given and a trap was laid and P.W. 1 proceeded to the barrier for laying a trap and entered the office to make a search, does not admit of doubt. This Court also held it to be so in the State of Madhya Pradesh v. Mubarak Ali, [1959 Supp 2 SCR 201 : AIR 1959 SC 707 : 1959 Cr LJ 970] in which the requirements of Section 165 to be complied with have been set out and analysed. Even so, to further counted that the appellants were entitled to act in the manner they did merely because the search was illegal, would be to confer a licence and afford them an unwarranted excuse to commit each and every criminal act. The provisions of Section 165 deal with search and seizure. The non-conformity with any of the requirements of that provision must be confined to that part of the investigation which related to the actual search and seizure but once the search and seizure is complete that provision ceases to have any application to the subsequent steps in the investigation. All cases cited deal with the situation arising out of the actual search and seizure alone. It may be that an obstruction during the course of a search not conducted in conformity with the provisions of Section 165, Cr.P.C., might be justified but there is no warrant for the further submission that the person in whose premises a search is made or from whom articles are seized is entitled to act in the manner the appellants have acted in preventing P.W. 1 from discharging his official duties.

6. The decisions of this Court to which a reference will be made, do not support the submissions made on behalf of the appellants that since the search is illegal, even for the moment accepting that to be so, the entire investigation till the laying of the charge-sheet under Section 173, Cr.P.C., is to be treated as illegal and would afford a justification for the acts of the appellants as held proved in this case. In The State of Rajasthan v. Rahman, [(1960) 1 SCR 991 : AIR 1960 SC 210 : 1960 Cr LJ 286] a Deputy Superintendent of Central Excise, who accompanied by an Inspector of Central Excise, a sepoy, a chowkidar and two motbirs, without complying with the provisions of Section 165, Cr.P.C., had gone to the house of the respondent with a view to search the house for finding out whether he had stored tobacco there. When they declared their intention to do so, the respondent and one Dhaman, it is alleged, obstructed the making of the search with the result that the Deputy Superintendent fell down and received some injuries. The respondent and Dhaman were prosecuted for an offence under Section 353, I.P.C. No doubt, this Court (Gajendragadkar and Subba Rao, JJ. as they then were), had held that the search made by the Deputy Superintendent in contravention of the provisions of Section 165 of the Code was illegal but even so, it did not go into the question whether the omission to record the reasons was only an irregularity and that the respondents had no rights to prevent the officer from making the search because as that contention had not been raised till then it felt that there was no justification to allow it to be raised before it for the first time. This case was considered in Bai Radha v. State of Gujarat, [(1969) 2 SCR 799 : (1969) 1 SCC 43] by Shah, J. (as he then was), Ramaswami and Grover, JJ. There a search was made under Section 15 of the Suppression of Immoral Traffic in Women and Girls Act, 1956, the provisions of which were in pari materia with Section 165, Cr.P.C., in that (1) if the special police officer empowered to search the premises has reasonable grounds for believing that an offence punishable under that Act has been or is being committed in respect of a woman or a girl living in any premises and that such search of the premises with warrant cannot be made without undue delay, such officer may, after recording the grounds of his belief, enter and search such premises without a warrant; (2) before making a search the special police officer was required to call upon two or more respectable inhabitants (at least one of whom shall be a woman) of the locality in which the place to be searched is situate, to attend and witness the search. It was contended that since these provisions have not

been complied with, the conviction of the appellant was illegal. The High Court in that case was of the view that the power to conduct the search was derived from the statute and not from the recording of the reasons and, therefore, the search was not rendered illegal on account of the contravention of Section 15(1) of the Act, nor was there any provision in law which rendered the evidence of the Pancha witnesses inadmissible even though Section 15(2) had been contravened. In this view, it did not agree with the decision of the Andhra Pradesh High Court in Public Prosecutor, Andhra Pradesh v. Uttarvalli Nageshwararao, [AIR 1965 AP 176] which held that the directions contained in sub-section (2) were of a mandatory nature. After referring to the State of Rajasthan v. Rahman's case (supra), Grover, J. pointed out that that case could not be of much assistance to the appellant because no question was involved in the case before them of any public servant being obstructed in the course of a search conducted under Section 165, Cr.P.C. The trial of the appellants was for contravention of certain provisions of the Act and the search was made in respect of this offence. In these circumstances, the non-observance of the provisions of Section 15(2) was held to be not an illegality but a mere irregularity having regard to the provisions of Section 537 of the Criminal Procedure Code, and unless it is shown that such irregularity has caused a failure of justice, the conviction cannot be set aside. It would, therefore, appear that this Court has not finally decided whether a search already made in contravention of the provisions of Section 165, Cr.P.C., makes it illegal or void or merely provided a justification for an obstruction to the search when it is intended or in the process of its being conducted.

7. On the findings in this case, it is unnecessary to resolve this doubt because even if the search is illegal, it does not justify any obstruction or other criminal acts committed against the persons who had conducted the search. The facts undisputably disclose that even after P.W. 1 was allowed to go away on the assurance that he would give a copy of the seizure memo and writing at the Dak Bungalow to say that a search was made, had asked the appellants to accompany him there, and had gone out of the office and was on the road he was forcibly seized, lifted, taken into the office and thrown on a chair. Thereafter he was confined there and threatened with a lathi till he had complied with the demand of the appellants to give in writing that he had taken a search of the barrier. The evidence of P.W. 1, P.W. 6, P.W. 7 and of the Station Officer P. N. Misra P.W. 8, clearly supports the findings of both the courts.

8. It may be observed that Section 342, Cr.P.C., is not confined to offences against public servants but is a general section and makes a person who wrongful restrains another, guilty of the offence under that section. A wrongful confinement is a wrongful restraint in such a manner as to prevent that person from proceeding beyond a certain circumscribed limits. This offence has nothing to do with the investigation or search and, therefore, the argument that the accused were entitled to obstruct P.W. 1 because he did not conform to the provisions of Section 165, Cr.P.C., is an argument of desparation. It is again contended that all that the appellants did was to request P.W. 1 to give them in writing that a search was made which they were entitled to ask. To put it thus is to make the act an inocuous one but considered in the light of the inexonerable facts as established in this case, clearly make the acts of the appellants culpable. By no stretch of logic or reason can the justification for obstruction during the course of a search in contravention of the provisions of Section 165 entitle a person to force a public servant or any other person to do acts contrary to their volition. It may be mentioned that Section 103 which is applicable to searches under Section 165, Cr.P.C., by virtue of Clauses 4 thereof, requires the person conducting the search to prepare a list of the things taken into possession and give the person searched a copy of that list. It was exactly that which was being done by P.W. 1 when he prepared a seizure-memo in which the details of the currency notes were written but he was prevented from completing it by the appellants asking Narayan Singh in whose presence in the office they were seized, not to sign it. In these circumstances when it

appeared that the appellants had become abusive and aggressive, P.W. 1 told them to come to the Dak Bungalow where he would give them a copy. This in our view cannot be said to amount to non-compliance with the provisions of Section 103, Cr.P.C., as P.W. 1 was prevented from complying therewith. Section 103 does not say that the copy should be given then and there though ordinarily that would be implied. It could be given soon after the search so long as there is no opportunity to raise any suspicion or doubt as to the authenticity of articles seized. Not to allow P.W. 1 to go to the Dak Bungalow and take him forcibly from the road into the office and threaten him with a lathi to write and give a memo that he had searched the office when he was willing to do so at the Dak Bungalow, is to wrongfully confine him during the period he does not comply with that demand not can in our view the illegality of the search, if it was an illegality, continue as contended during the whole process of investigation till the filing of a chargesheet under Section 173, Cr.P.C. If this proposition is accepted, namely, that if the investigation at any stage is illegal, that illegality continues to effect the subsequent investigation and justifies a person considering himself to be aggrieved to impede, obstruct and unlawfully prevent its further progress, then the logical implication would be to encourage people to take the law into their hands, frustrate the investigation of crimes and thwart public justice. The apart, obstruction to search is to the act of the person conducting a search. It is a defensive act but where search has ended and the persons conducting the search have left the premises, to bring them back and to make them do things against their will is not an obstruction to an act but a compulsion to make them act. In this view, the conviction and sentence of the appellant Shyam Lal Sharma under Sections 342 and 353 and of appellant Udho Prasad under Sections 353 and 342 read with Section 34 are justified. In so far as their conviction under Section 332 is concerned, the contention of the learned advocate is that the appellants were not charged with this offence and, therefore, they are entitled to an acquittal as they are prejudiced thereby. The learned advocate for the respondent does not insist on this conviction being upheld. In any case as we are confirming the conviction and sentence under the other two sections, it is not really necessary to go into the legality of the conviction under Section 332. Accordingly, we set aside the conviction and sentence under Section 332 and confirm the convictions and sentence of the appellants under Sections 342 and 353, Cr.P.C. The appeal except to the extent indicated is dismissed.

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