

**Gurucharan Singh Vs. the State**

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**Court :** Allahabad

**Decided On :** Nov-13-1963

**Reported in :** AIR1965All543; 1965CriLJ582

**Judge :** D.S. Mathur, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 97, 99, 352, 354 and 392; [Central Excise Act, 1944](#)

**Appeal No. :** Criminal Revn. No. 635 of 1963

**Appellant :** Gurucharan Singh

**Respondent :** The State

**Advocate for Def. :** Addl. Govt. Adv.

**Advocate for Pet/Ap. :** D.P. Mital, ;P.C. Chaturvedi and ;J.N. Chaturvedi, Adv.

**Disposition :** Revision partly allowed

**Judgement :**

ORDER

**D.S. Mathur, J.**

1. This is an application in revision by Gurcharan Singh to challenge his conviction of an offence punishable under Section 392,1. P. C. The Magistrate had awarded

a sentence of one year's R. I., but on appeal the Sessions Judge reduced it to six months' R.I.

2. The finding of fact recorded by the lower courts cannot be said to be improper and this Court can easily start from such facts in determining whether the applicant committed any offence of which he could be convicted.

3. The facts as established are that the applicant Gurcharan Singhi carries on the business of khandsaii in his factory premises situated within P. S. Baradari of the city of Bareilly. On the evening of 7-9-1961 at about 4 p. m. Sri G. B. Srivastava, Superintendent, Central Excise, accompanied by the-Deputy Superintendent, Sri G. S. Mathur, and Inspector, Sri Uma Shanker Lal, went to the Khandsar of the applicant for inspection. The applicant was not present at that time. The Superintendent checked the register in Form. R. G. 10 of raw material used and khandsari sugar manufactured and issued, maintained by the manufacturer under Rule 83 (7) of the Central Excise Rules 1944 (to be referred hereinafter as the Rules). He also checked the electricity consumption register which was also maintained under the Rules. He found that both the registers were not being maintained regularly. He took those registers in his possession after handing over a receipt to the employee of the applicant then working in the factory. The Superintendent brought both the registers to his-office and handed them over to the Inspector, Sri Uma Shanker Lal, for thorough checking.

4. The Inspector left the office after 5 p. m., and proceeded to his house, situate in Mohalla Nai Basti, on his cycle, having placed both the registers on the carrier thereof. One Ram Lal Nagpal, a clerk of the Central Excise Office, also accompanied the Inspector on his cycle. They reached the Harijan Colony at about 5.30 p. m. It was then the applicant arrived from the rear sitting on the carrier of a cycle driven by another person. The applicant pushed the cycle of the Inspector, Sri Uma Shanker Lal, who lost balance and collided with the cycle of R. L. Nagpal, with the result that both fell down from their cycles. Thereafter the applicant snatched the two registers from the carrier of the cycle of the Inspector and fled away on his own cycle towards his factory, before the Inspector and Nagpal could get up and take any effective measure to arrest the applicant or to get back the

registers. They tried to pursue the applicant, but on account of the blocking of the Rasta by six persons who arrived on three cycles, they could not continue the chase.

5. The Inspector then returned to his office and gave information to the Superintendent of what had happened. The Inspector had a report scribed by the Deputy Superintendent and both proceeded to P. S. Baradari where the written report was handed over at 8 p. m. The police registered the crime under Section 353, I. P. C.

6. Offence of robbery punishable under Section 392, I. P. C. is defined in Section 390, I. P. C. and in all robbery there is either theft or extortion. Consequently, unless the applicant can be deemed to have committed theft of the two registers, he cannot be convicted of the offence of robbery.

7. 'Theft' is defined in Section 378, I. P. C. A person is said to commit theft when he intending to takedishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking. Ownership does not determine the offence of theft. Even the owner can be convicted of this offence if he dishonestly removes his own property from the possession of another person without that person's consent. In the instant case, the inspector was in possession of the two registers though belonging to the applicant and the registers had been removed without his (Inspector's) consent In other words, there was removal or taking of the registers out of the possession of the Inspector without his consent. Such removal shall amount to their if the property was so removed dishonestly.

8. The word 'dishonestly' has been defined in Section 24 I. P. C. as an act done with the intention of causing wrongful gain to one person or wrongful loss to another person. The terms 'wrongful gain' and 'wrongful loss' are defined in Section 23, I. P. C. as below :

"Wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled. 'Wrongful loss' is the loss by unlawful means of property to which the person losing it is legally entitled.'

Gain of the property by the applicant and loss of the property by the Inspector was by unlawful means, the applicant having not acted under the law to get back the registers which had earlier been taken by the Superintendent. Every gain and also the loss shall not be wrongful unless the other ingredient of the above terms is also established. The point for consideration, therefore, is whether the applicant was not legally entitled to possess the registers or the Inspector was legally entitled to the registers.

9. The right of the Inspector to possess the registers shall depend upon the right of the Superintendent who had taken the registers with him. For determining whether the Inspector was legally entitled to the registers, we shall have to consider whether the Superintendent could have taken the registers with him in the absence of the applicant.

10. The State counsel was granted a few adjournments to contact the department concerned and thus be in a position to bring to the notice of the Court all the relevant provisions of the Act and the Rules. The Superintendent of the Central Excise Office at Allahabad did appear in Court to render assistance and he put up the relevant rules for consideration of the Court.

11. The proprietor of a factory is the owner thereof, but in special circumstances as contained in Rule 3 of the Rules, an agent can also be deemed to be the owner of the factory. This Rule lays down that when any person is expressly or impliedly authorised by the owner of any goods, factory or warehouse to be his agent in respect of such goods, factory or warehouse, for all or any of the purposes of these Rules, and such authorisation is approved by the Collector, such person shall, for such purposes be deemed to be the owner of such goods, factory or warehouse. Where the factory is managed and records maintained by an employee in the absence of the owner, the Courts can hold, unless proved to the contrary, that he (employee) had been impliedly authorised by the owner of the factory to be his agent in respect of such factory for most of the purposes of the Rules. But such implied authorisation by the owner alone cannot convert the status of the employee to that of an owner, of course, for purposes of the Rules, unless such authorisation has been approved by the Collector. There is nothing on record to

show that the Collector or an officer to whom the power of the Collector under Rule 3 was delegated had approved the implied authorisation by the owner. In absence of such evidence, the employee from whom the Superintendent had taken the registers cannot be regarded as the owner of the factory, from whom the registers could be demanded by the proper officers under Rule 226 of the Rules.

12. At this place it may also be observed that Rule 83 (7) of the Rules makes a differentiation between owner and manufacturer. Ordinarily both shall be the same person; but it can easily happen that the owner may not be the actual manufacturer. Considering that Rule 3 refers to owner and not manufacturer, it may not be possible to regard a duly authorised agent to be the manufacturer, though under R, 3 he is for purposes of the Rules the owner of the factory.

13. Rule 83 of the Rules governs the maintenance of accounts, Under Sub-rule (7) thereof it is obligatory for a manufacturer who produces exclusively khandsari or palmyra sugar or both to maintain a daily account in Form R.G 10 showing the quality of sugar manufactured and sold each day, and the quantity of raw materials used. Another duty is cast upon a person required by the Rules to maintain an entry book, stock account or warehouse register in respect of goods produced, manufactured or stored by him. Reading Rules 83 (7) and 226 of the Rules together it must be held that the manufacturer of Khandsari sugar should maintain accounts in the manner provided in Rule 228 and comply with the conditions detailed therein. One of the conditions so prescribed is that he shall, at any time, if demanded, send the account to the 'proper officer'. The term 'proper officer' has been defined in Rule 2 (xi) of the Rules. The Superintendent of the Central Excise shall be a 'proper officer' as contemplated by the Rules, In other words, the Superintendent could demand the register in Form R. G. 10 from the manufacturer i.e. the applicant; but no such demand could be made from his employees, all the more during his absence. The other part of Rule 226 lays down the penalty for not delivering the registers to the officer on demand; but the manufacturer cannot be guilty of non-compliance of Rule 226, unless a demand for the production of the registers is made and he fails to comply with the demand.

14. The Courts of law may take a liberal view where the Superintendent takes the registers in the presence of the manufacturer without the latter raising any objection. Even though no formal demand may have been made, verbally or in writing, the Courts can presume from the conduct of the parties that there was by implication a demand and the manufacturer complied with the demand and by implication delivered the registers so demanded. But before such a presumption is drawn it must be established that the manufacturer was present at the time the registers were taken into custody by the 'proper officer'. In the instant case, the manufacturer, namely, the applicant, was admittedly not present at the time when the Superintendent took the registers into his custody. Consequently, it cannot be held that the Superintendent had by implication demanded the registers under Rule 226. Under his direction the Inspector could keep the registers in his possession, but it cannot be said that he was legally entitled to keep the registers.

15. Courts of law can take a contrary view if under some law or rules having the force of law, the Superintendent could seize the registers not maintained in accordance with the Rules. The question for consideration therefore is it the officers belonging to the Central Excise Department have the power to seize registers and, if so, in what circumstances.

16. Under Section 12 of the Central Excises and Salt Act, 1944, the Central Government can, by notification in the Official Gazette, declare that any of the provisions of the Sea Customs Act, 1878, relating to matters detailed therein, shall with such modifications and alterations as it may consider necessary or desirable to adapt them to the circumstances, be applicable in regard to like matters in respect of the duties imposed by Section 3. Under Notification No. 9/59 dated 24-1-1959 as superseded or amended by subsequent Notifications the provisions of Sections 168, 172, 178, 179, 180, 189 and 192 of the Sea Customs Act, 1878, relating to matters specified therein, were made applicable to like matters in respect of the duties imposed by Section 3 of the Central Excises and Salt Act, 1944. The applicability of these provisions was subject to the modifications and alterations as detailed in the Notification.

17. Section 172 of the Sea Customs Act alone refers to searches and thereunder a Magistrate can issue a warrant for the search of goods on an application made by the Central Excise Officer not inferior in rank to an Inspector. In the instant case no search warrant had been obtained and the provisions of the Sea Customs Act are not helpful in determining the above question in issue.

18. The powers of entry, search, seizure and investigation are detailed in Ch. XI of the Rules. Rule 197 empowers any officer authorised in writing by the Collector to have free access at all reasonable times, to any premises licensed under the Rules and to any place where excisable goods are stored or manufactured. This rule also empowers such officer to inspect the accounts and call for information. Under Rule 199 of the Rules an officer duly empowered by the Collector can stop and detain any person found carrying or removing any excisable goods for the transport of which a permit or other transport document is required by the Rules. He has the power under Rule 200 to stop and search vessels, carts or other means of conveyance which have excisable goods, and to seize and remove or detain any such goods or articles in respect of which it appeared to him that duty should have but has not been levied, or that any contravention of the provisions of the Act or Rules has occurred.

19. The power of search is also contained in Rule 201 which provides that the Central Government may empower any officer of any department under its control to enter and search at any time by day or by night any land, building etc., upon or in which he has reason to believe that excisable goods are stored or manufactured in contravention of the provisions of the Act or the Rules. It shall be found that the officer can seize and remove or detain only such goods or articles in respect of which duty should have but has not been levied or there has been contravention of the provisions of the Act or the Rules.

20. My attention has not been drawn to any provision under which the officers of the department can seize the account books maintained by the manufacturer. When the Central Excise Officers are not empowered to seize the books of account not maintained in accordance with the Rules, they cannot take such registers in their possession either during the course of inspection or during search,

though they can demand such registers from the manufacturer. In addition the Central Excise Officers can take extracts therefrom or make any minute therein to enable them to take further action in accordance with the law.

21. The manufacturer, namely, the applicant, was not present at the time the Superintendent along with the Deputy Superintendent and Inspector visited his (applicant's) factory and no demand at the spot could be made. The Superintendent did not also issue any order or direction calling upon the applicant to deliver the registers in the former's office. If it was necessary to take the registers into custody forthwith, the Superintendent should have left one of his subordinates in the factory with a letter of demand directing that the registers be delivered to that person. If the manufacturer delivered the registers, that person could take the registers and hand them over to the Superintendent ; in case of default, the manufacturer could be suitably dealt with. Instead, what the Superintendent did was to himself take the registers with him. The Superintendent was acting in good faith, apparently he was erroneously of the view that he could take the registers with him. Though the act of the Superintendent in removing the registers from the factory could not amount to theft, yet it cannot be said that without a formal demand from the manufacturer the Superintendent was legally entitled to the possession of the registers taken away by him during the visit to the factory. The person legally entitled to the registers continued to be the manufacturer, namely, the applicant.

22. It is true that the applicant wanted to take back the registers so that irregularities committed by him may not come to the notice of the authorities, yet in determining the guilt we shall be guided by the provisions of the Indian Penal Code and shall not be justified to depart from the express provisions of the Code on the ground that the accused had done an improper act which a layman would regard as an unlawful Act.

23. When the applicant was legally entitled to the registers, it cannot be said that by taking away the registers he had caused 'wrongful gain' to himself or 'wrongful loss' to the officers of the Central Excise Department. In other words, even though the applicant adopted unlawful means, his act did not amount to theft within the

meaning of Section 378, I. P. C.

24. To get over the legal difficulty, it was contended by the learned State Counsel that by virtue of the registers having been handed over to the Inspector by his superior officer, he (Inspector) was the person legally entitled to retain the registers in his possession and, consequently, when he was deprived of the registers, wrongful loss was caused to him. An attempt has been made to make a differentiation between the possession of the Superintendent and of the Inspector. In the circumstances of the present case both must be placed in the same category. Both were present at the time the Superintendent took the registers in his possession and if the possession of the Superintendent was irregular, the Inspector would have known about it and his possession being as of an agent would also be irregular. If the courts take a different view, an owner of property which had been subject of their shall not be in a position to seize the stolen property even though he finds some one other than the thief in possession of it. For example, if A commits theft and passes on the property to B, it shall not be possible for the owner to snatch the property from the possession of B, though he could from the possession of A. The above contention, if accepted, will lead to absurdity. Further, the Inspector was present at the time the Superintendent took the registers with him and he should have been aware that the Superintendent was not legally entitled to the registers and the Inspector being the agent cannot later say that though the principal was not legally entitled, he as agent was legally entitled to retain the property. In case the person eventually in possession was a bona fide transferee or there was considerable gap between the removal of the property and the recovery thereof, and at the same time the person eventually in possession was not and could not be aware of the circumstances in which the principal got possession of the property, the Courts may take a different view.

25. Though the applicant cannot be said to have committed theft of the registers, he did not have the right to use force to recover the registers. Section 97, I. P. C. deals with the right of private defence of property. A person has a right to defend the property, whether movable or immovable, of himself or of any other person, against any act which is an offence falling under the definition of theft, robbery, mischief or criminal trespass, or which is an attempt to commit theft, robbery,

mischief or criminal trespass. While taking away the registers the Superintendent was acting in good faith without the criminal intention contemplated by Section 378, I. P. C. The Superintendent having not committed the offence of theft, no right of private defence could accrue. Further, the general light of private defence given under Section 97, I. P. C. is subject to the restrictions contained in Section 99, I. P. C. It is clearly provided in Section 99, I. P. C. that there is no light of private defence in cases in which there is time to have recourse to the protection of the public authorities. In the instant case, the applicant could have approached the superiors of the Superintendent for the return of the registers and if there was no officer superior to the Superintendent posted at the station, the applicant could have approached senior officers of other departments and, in any case, could move the police for redress. Further, by the registers remaining in the custody of the Superintendent, no loss or damage was likely to be caused to the applicant. In other words, the present was not a case in which the applicant could use force to recover the registers which had been taken away by the Superintendent in good faith.

26. When the applicant pushed the cycle of the Inspector, he caused change of motion as a result of which the Inspector collided with the other cycle and fell down. The applicant thus used force as contemplated by Section 349, I. P. C. The force was used to cause injury, in any case, fear or annoyance to the Inspector and it shall amount to the use of criminal force punishable under Section 352, I. P. C. As no substantial hurt was caused, no useful purpose shall be served by sending the applicant to jail for a short period. A fine of Rs. 100/. would meet the ends of justice.

27. The revision thus partly fails and partly succeeds. The conviction and sentence of the applicant, Gurcharan Singh, under Section 392, I. P. C. are set aside. He is, however, convicted of the lesser offence under Section 352, I. P. C. and is sentenced to a fine of Rs. 100/. Three months allowed for payment of One; in case of default, he shall be liable to undergo two months' R. I.