

Prem Chand and ors. Vs. the State

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Court : Punjab and Haryana

Decided On : Feb-07-1964

Reported in : 1965CriLJ843

Judge : P.D. Sharma, J.

Appellant : Prem Chand and ors.

Respondent : The State

Judgement :

P.D. Sharma, J.

1. The learned Additional Sessions Judge of Patiala tried Prem Chand, Dharam Chand, Ishar Dass, Sundar Dass, Wasanda Ram, Ghanaya Lal and Pritam Lal, the first of them under Sections 353, 324, 308, 332/149 and 323/149 and the rest under Sections 353, 225, 308/149, 332/149 and 323/149 of the Indian Penal Code, Dharam Chand, Ishar Dass and Pritam Lal were acquitted of all the charges. Prem Chand, Sunder Dass, Wasanda Ram and Ghanaya Lal were convicted under Section 332 of the Indian Penal Code. The first of them was sentenced to one and a half years' rigorous imprisonment and payment of a fine of Rs. 250/- or in default to undergo rigorous imprisonment for another period of four months. The remaining three were sentenced to imprisonment till the rising of the Court and payment of a fine of Rs. 50/- or in default to further undergo rigorous imprisonment for one month each. The convicts have come up in appeal to this Court.

2. The prosecution case briefly stated is that Rajinder Singh, Excise Inspector, Patiala, (P. W. 1) on 17th May, 1982, on receiving information that liquor was sold and also served at Prem Hotel run by Prem Chand accused at Rafpura organised a raid party which included Rameshwar Lal Kapur, M.L. Kapur, Manram Singh, Excise Sub Inspector, Brij Bbushan, Mohan Lal, Kidar Nath, Bhagat Singh and others. The party reached the hotel at 8.30 P.M. The Excise Inspectors along with Rameshwar Lal Kapur and Minram Singh Excise, Sub Inspectors entered the hotel and found Ishar Dass, Dharam Chand accused (since acquitted) and another Sikh gentleman taking liquor. They took the liquor and the tumblers into possession and passed them on to Basant Singh peon for safe custody. The three who were drinking liquor were placed under arrest and so was Prem Chand accused-appellant, the hotel keeper. Wasanda Ram, Chanaya Lal and Sundar Dass accused appellants are servants of Prem Chand accused-appellant. They were also present at the time in the hotel. Rajinder Singh Excise Inspector decided to search the hotel and so went to the police station in order to obtain help.

He returned after about half an hour with one Assistant Sub-Inspector, two Head-constables and two constables. In the meantime a large crowd of about 150 to 200 persons had collected on the spot. Prem Chand is a displaced person from Bahawalpur State and the persons who had gathered near the hotel premises also came from there and were his sympathisers. The Excise Inspector was resisted by the four accused appellants in the search of the hotel premises and exhorted the mob to arrange for their release from the police and succeeded in their attempt. Prem Chand accused gave two or three danda blows on the head of the Excise Inspector. A.S.I. Kanwarjit Singh in an attempt to save the Excise Inspector also received injuries and a few members of the mob tried to snatch revolver from the possession of E. S. I. Manram Singh which in the scuffle fell down on the ground but he ultimately succeeded in retaining the same. Wasanda Ram, and Dharam Chand accused gave danda blows to one Gurdial Singh. Sunder Dass and Ghanaya Lal accused hit Brij Lal Excise peon. Prem Chand accused was all the time shouting that Bhagat Singh (P. W.) who was an Excise licences in Rajpura town was responsible for the raid and should be adequately dealt with. Thereupon Bhagat Singh in order to save his life took shelter in a room on the first floor of the hotel and also fired a few shots from his revolver.

3. Karam Singh Station House Officer, Rajpura, on hearing about the occurrence rushed to the spot and succeeded in restoring order. Rameshwar Lal Kapur reported the occurrence in writing Exhibit P. A. which was sent to the police station for registration of the case.

4. Lady Dr. P. Dhir medically examined Rajinder Singh, Basaat Singh, Gurdial Singh, Brij Lal and Kanwarjit Singh out of the complainant party and Dharam Chand, Prem Chand and Pritam Lal, the three accused, and noted their injuries. She conceded that the injuries on the person of Pritam Lal accused could be the result of the fire from a pistol or revolver. The injuries suffered by the complainant party were simple and caused by a blunt weapon, the details of which need not be noted here.

5. The accused-appellants pleaded not guilty to the charge and explained that Rajinder Singh Excise Inspector and his party were bent upon searching the premises of Prem Hotel against law and gave beating to Prem Chand, Dharam Chand and their employees Sunder Dass, Wasanda Ram and Ghanaya Lal. Bhagat Singh Excise Contractor, Rajpura, went to the extent of firing four shots from his pistol hitting Pritam Lal accused. Prem Chand further added that drinking of excise liquor was not prohibited by law in his hotel and that the Excise contractors demanded money from him for allowing people to consume liquor in his hotel and on his refusal to do so they arranged the raid and in the course caused injuries to him and his servants.

6. Rajinder Singh Excise Inspector (P. W. 1), Brij Bhushan (P. W. 2), Mohan Lal (P. W. 3) and S. I. Rameshwar Lal Kapur (P. W. 4) were cited at the trial as eye-witnesses. Their statements have already been noted while giving the prosecution version. Kidar Nath (P. W. 5) and Bhagat Singh (P. W. 6), wine contractors, Patiala and Rajpura respectively, were simply tendered for cross examination. S. I. Karam Singh (P. W. 7) investigated the case and detailed the steps taken by him in that connection. The trial Judge from the above came to the conclusion that the accused appellants had put up resistance to the search of the hotel premises and attacked members of the raid party causing injuries to a few of them without any justification or reasonable excuse.

He also observed that the Punjab Government Notification No 393-E & T (VI)-60-802A, D/- 25th February, 1960, also covered the Rajpura Township which prohibited the possession of any quantity of country liquor or foreign liquor in any premises used as a restaurant within the local limits of 59 towns detailed therein. In his view, Prem Chand accused-appellant was not justified in serving liquor to Dharam Chand, Ishar Dass accused (since acquitted) and a Sikh gentleman and for them to consume liquor in Prem Hotel premises. He, therefore, approved the Excise Inspector's action in raiding these premises and also the manner in which the raid was conducted by him. Accordingly he held that the accused-appellants had voluntarily caused hurt to Brij Lal and Rajinder Singh public servants in the discharge of their duties as such public servants.

7. The learned Counsel for the appellant; strenuously contended that the Punjab Government Notification referred to above covered Rajpura and not Rajpura Township which had a separate Municipal Committee and could not be said to be a part of the former and that being so, liquor could be consumed by Dharam Chand and others in Prem Hotel premises without offending any provision of the Punjab Excise Act, 1914 (hereinafter referred to as the Act). He further urged that Rajinder Singh Excise Inspector (P. W. 1) while raiding Prem Hotel Premises omitted to observe the mandatory provisions of Section 165 of the Code of Criminal Procedure and so the accused-appellants had a right to resist the search of their hotel premises. It is common ground that the Excise Inspector wanted to search the hotel premises without a warrant, Section 49 of the Act confers powers on him to search without warrant and Section 50 lays down the procedure for carrying out such a search. These run as:

49. (1) Whenever any excise officer not below such rank as the State Government may by notification prescribe, has reason to believe that an offence punishable under Section 61, Section 62, 8. 63 or Section 64, has been, is being, or is likely to be, committed in any place, and that a search warrant cannot be obtained without affording the offender an opportunity of escape or of concealing evidence of the offence he may, at any time, by day or night, enter and search such place.

(2) Every excise officer as aforesaid may seize anything found in such place which he has reason to believe to be liable to confiscation under this Act, and may detain and search and, if he thinks proper, arrest any person found in such place whom he has reason to believe to be guilty of such offence as aforesaid.

50 Save as in this Act otherwise expressly provided, the provisions of the Code of Criminal Procedure, 1898, relating to arrests, detention in custody, searches, summonses, warrants of arrests, search-warrants, production of persons arrested and investigation of offences shall be held to be applicable to all action taken in these respects under this Act:

Provided that-

(1) * * * * *

(2) whenever an excise officer below the rank of Collector makes any arrest, seizure or search, he shall within twenty four hours thereafter make a full report of all the particulars of the arrest, seizure or search to his immediate official superior, and shall unless bail be accepted under Section 73 take or send the person arrested, or the article seized, with all convenient despatch to a magistrate for trial or adjudication.

A careful examination of both these sections indicates that the Excise Inspector was fully competent to search Prem Hotel premises without a warrant but it is equally patent that while doing so he was required to follow the procedure laid down in Section 165 of the Code of Criminal Procedure, the relevant part thereof provides:

165. (1) Whenever an officer in charge or a police-station or a police-officer making an investigation has reasonable grounds for believing that anything necessary for the purposes of an investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police-station of which he is in charge, or to which he is attached, and that such thing cannot in his opinion be otherwise obtained without undue delay, such officer may, after recording in writing the grounds of his belief and specifying in such writing,,

so far as possible, the thing for which search is to be made, search, or cause search to be made, for such thing in any place within the limits of such station.

(2) * * * * *

(3) * * * *

(4) The provisions of this Code as to search warrants and the general provisions as to searches contained in Section 102 and Section 103 shall, so far as may be, apply to a search made under this section.

(5) Copies of any record made under Sub-section (1) or Sub-section (3) shall forthwith be sent to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate: Provided that he shall pay for the same unless the Magistrate for some special reason thinks fit to furnish it free of costs.

There is not an iota of evidence on the record to suggest even remotely that the Excise Inspector proceeded to search Prem Hotel premises after recording in writing the grounds of his belief and specifying in such writing, so far as possible, the thing for which the search was to be made. His omission to do so rendered the search illegal. The accused-appellants were fully justified in resisting such a search of their premises. The decision of the Supreme Court in *State of Rajasthan v. Rehman* : 1960 CriLJ286, supports my viewpoint which! lays down:

The object of the search under the Act is only to ascertain whether there is a contravention of the provisions of the Act or the Rules; Rule 201 enables the authorized officer to make a search only for the investigation of an offence. The power of search given under Chapter 14 of the Criminal P. C., is incidental to the conduct of investigation which the police officer is authorized by law to make. Searches made by a police officer during the course of an investigation of a cognizable offence can properly be approximated with the searches to be made by the authorized officer under Rule 201 of the Rules; for, in the former case, the police officer makes a search during the investigation of a cognizable offence and

in the latter the authorized officer makes the search to ascertain whether a person contravened the provisions of the Act or the Rules, which is an offence. There is also no reason why conditions should be imposed in the matter of a search by the police officer under Section 165 of the Criminal Procedure Code, but no such safeguard need be provided in the case of a search by the excise officer under the Rules. The legislature, by stating in Section 18 of the Act that the searches under the Act and the Rules shall be carried out in accordance with the provisions of the Code relating to searches, clearly indicated that the appropriate provisions of the Code shall govern searches authorized under the Act and the Rules. Therefore the provisions of Section 165 of the Code must be followed in the matter of searches under Rule 201 of the Rules. The recording of reasons under Section 165 does not confer on the officer jurisdiction to make a search, though it is a necessary condition for making a search. Section 165 of the Code lays down various steps to be followed in making a search. The recording of reasons is an important step in the matter of search and to ignore it is to ignore the material part of the provisions governing searches. If that can be ignored, it cannot be said that the search is carried out in accordance with the provisions of the Code of Criminal Procedure : it would be a search made in contravention of the provisions of the Code.

Section 18 of the Central Excise and Sales Tax Act is analogous to Section 50 of the Act. The trial Court altogether lost sight of this aspect of the case while determining the right of the accused appellants to resist the search which they could do in the exercise of their right of private defence of property. The Excise Inspector flagrantly disregarded the wholesome provisions of Section 165 of the Code of Criminal Procedure while raiding Prem Hotel premises and thereby created a situation for which he was more responsible than the opposite party. The accused-appellants on no score could have been convicted under Section 332 of the Indian Penal Code.

8. In the result the appeal is allowed and the accused-appellants are acquitted. The amount of fine, if paid, should be refunded to them. Prem Chand accused-appellant is on bail. His bail bonds are discharged.

