

DUSHYANT SINGH AND ANOTHER

v.

REGINAM

[SUPREME COURT, 1970 (Moti Tikaram P.J.) 1st May, 19th June]

Appellate Jurisdiction

A *Criminal law—assaulting police officer in the due execution of his duty—intention to search person based on reasonable grounds—actions of police officer within general scope of statutory powers and common law duties—Penal Code (Cap. 11) s. 279 (b)—Criminal Procedure Code (Cap. 14) s. 18 (1).*

Police—assault on constable—whether acting in due course of his duty—power to arrest and search—common law duties—Penal Code (Cap. 11) s. 279 (b)—Criminal Procedure Code (Cap. 14) s. 18 (1).

B Acting on a report by a solicitor that the second appellant had stolen some documents, the complainant, a detective constable, approached the second appellant who was standing on a footpath holding some papers. The complainant told the second appellant that he was a constable and that the solicitor had said that the second appellant had stolen some of his papers. The second appellant abused the police and, upon the complainant's making a move to grasp the papers in his hand, started to run away. The complainant followed and was then assaulted by the second appellant and his brother, the first appellant. The two appellants were convicted of assaulting a police officer in the due execution of his duty.

Held: 1. Under section 18 (1) of the Criminal Procedure Code the complainant would have been entitled to detain and search the second appellant.

D 2. The actions of the complainant disclosed an intention based on reasonable grounds at least to search the second appellant.

3. The facts of the case clearly showed that the second appellant never gave the complainant a chance either to detain or to search him.

4. The actions of the complainant were within the general scope of his statutory powers and his common law duties and did not amount to unlawful interference with the second appellant's right of property.

E 5. The complainant was acting in the due execution of his duty.

Cases referred to:

Willey v. Peace [1951] 1 K.B. 94; [1950] 2 All E.R. 724.

Glasbrook Bros Ltd. v. Glamorgan County Council [1925] A.C. 270; 132 L.T. 611.

Rice v. Connolly [1966] 2 Q.B. 414; [1966] 2 All E.R. 649.

R. v. Lushington, Ex parte Otto [1894] 1 Q.B. 420; 70 L.T. 412.

F *R. v. Waterfield* [1964] 1 Q.B. 164; [1963] 3 All E.R. 659.

Donnolly v. Jackman [1970] 1 All E.R. 987; [1970] 1 W.L.R. 562.

Appeals against convictions and sentences imposed in the Magistrate's Court

D. S. Sharma for the appellants.

J. R. Reddy for the respondent.

The facts sufficiently appear from the judgment.

MOTI TIKARAM P.J.: [19th June, 1970]—

This is an appeal against conviction and in the alternative against sentence. Both appellants were convicted by the Magistrate's Court of the First Class sitting at Lautoka of assaulting a police officer in the due execution of his duty contrary section 279 (b) of the Penal Code, Cap. 11. Each was fined \$100. A

The particulars of offence were as follows:—

" Dushyant Singh s/o Joy and Ravindra Singh s/o Joyti Singh on the 19th day of July, 1969 at Lautoka in the Western Division assaulted police constable No. 164 Durga Prasad in the due execution of his duty." B

It is the contention of the appellants that the trial Magistrate erred in law in holding that the Constable Durga Prasad was acting in the due execution of his duty. It is not in dispute that the appellants assaulted the constable, nor can there be any dispute with the trial Magistrate's findings of fact, the relevant part of which reads as follows:—

" That in the early afternoon of Saturday the 19th July, 1969 Mr. B. K. Pillay of Lautoka, lawyer reported to the police station that some documents of his had been stolen by the defendant Ravindra Singh and he wanted police assistance to recover them. Constable Prasad, in plain clothes, accompanied by a uniformed officer, Jitendra Kumar, went with Mr. Pillay to the South Seas Club. On arrival there Mr. Pillay pointed out Ravindra Singh who was standing on the footpath with some papers in his hand. The Constable got out of the taxi and approached Singh. His evidence is that he said " I am a police officer. Mr. Pillay says you have stolen some of his papers ". The second defendant retorted that he had no time for the police, using a common obscenity. It seems clear that at this point the Constable made a move to grasp the papers in the second defendant's hand. Singh turned and started to run away. The Constable followed. He was then struck from behind and caught hold of. On turning he discovered his assailant to be the person, later identified to be the first defendant, Dushyant Singh. A struggle then ensued between the Singh brothers and the two Constables during which Ravindra Singh punched the Constable on the left side. Dushyant Singh had the Constable by the throat and it was not till the Constable took the baton from Detective Constable Kumar and brought the two men under restraint with it that the struggle stopped." C D E

The evidence clearly shows that the pursuit and the actual assault took place in a public place. F

Mr. Sharma, learned Counsel for the appellants has submitted that the evidence disclosed that Constable Durga Prasad said he was making enquiries and did not at any time say that he was arresting Ravindra Singh for having in his possession articles suspected to be stolen. He submitted that a police officer cannot detain and search a person unless he arrests him. He says that the Constable may well have been justified in arresting Ravindra Singh for suspected theft but the fact of the matter is that he did not do so. Consequently the appellants should have been convicted for common assault but not for assaulting a police officer in the due execution of his duty. G

It is for this Court to consider whether the Constable was acting in the due execution of his duty. As I understand Mr. Sharma's argument, it is based on the contention that although the Police Officer was on duty yet what he did or attempted to do amounted to an unlawful interference with the person's liberty or property. In short he was acting outside his lawful powers. Mr. Sharma argues that had the Constable said to Ravindra Singh, " I wish to search you for having in your possession some article suspected to be stolen.", then his action would H

A come within the ambit of 'due execution' of his duty. The learned Counsel for the appellant cited the case of *Willey v. Peace* [1951] 1 K.B. 94 (which involved interpretation of a provision similar to that found in section 18 (1) in our Criminal Procedure Code) in which the conviction was upheld because the Constable said he wished "to search". Mr Sharma agreed that under section 18 (1) of the Criminal Procedure Code, Constable Durga Prasad would have been entitled to detain and search Ravindra Singh without warrant but he submitted that since the Constable merely said that he wished to make enquiries he was not invoking his powers under section 18 (1).

B Mr. Sharma argued that "making enquiries" is a nebulous term and cannot be interpreted to include an intention on the part of the Constable to search Ravindra Singh. With respect, introduction of such fine refinements would not only cut across the powers and duties of police constables but also defeat the object of the statutory provisions.

C From an examination of reported cases it seems that courts have purposely chosen to deal with a police constable's duties in general terms rather than attempt to lay down by way of definition the scope or extent of these duties. In *Glasbrook Bros Ltd. v. Glamorgan County Council* [1925] A.C. 270, the Lord Chancellor, Lord Cave, said at page 277:

D "No doubt there is an absolute and unconditional obligation binding the police authorities to take all steps which appear to them to be necessary to keep the peace, for preventing crime and for protecting property from criminal injury".

The words of Lord Parker C.J. re-echoed this view in *Rice v. Connolly* [1966] 2 Q.B. 414, 419 when he said:

E "It is also in my judgment clear that it is part of the obligations and duties of a police constable to take all steps which appear to him necessary for keeping the peace or preventing crime or protecting property from criminal injury".

And, with particular reference to obtaining evidence Wright J. said in *Lushington* [1894] 1 Q.B. 420 at page 423:

F "In this country I take it that it is undoubted law that it is within the power of, and it is the duty of, constables to retain for use in Court things which may be evidence of crime, and which have come into the possession of the constables without wrong on their part".

G Furthermore, in considering the problem whether an officer has gone outside the ambit of his duty so as to cease to be acting therein, I would refer to the words of Ashworth J. taken from *Reg. v. Waterfield* [1964] 1 Q.B. 164, 170:

H "In the judgment of this court it would be difficult, and in the present case it is unnecessary, to reduce within specific limits the general terms in which the duties of police constables have been expressed. In most cases it is probably more convenient to consider what the police constable was actually doing and in particular whether such conduct was *prima facie* an unlawful interference with a person's liberty or property. If so, it is then relevant to consider whether—

- (a) such conduct falls within the general scope of any duty imposed by statute or recognized at common law; and
- (b) whether such conduct, albeit within the general scope of such a duty, involved an unjustifiable use of powers associated with the duty."

The Constable's actions in the appeal case before me viewed in their entirety clearly disclose an intention on his part to at least search upon reasonable grounds bearing in mind the nature of the complaint he was investigating and the papers held by Ravindra Singh. The facts of this case clearly show that Ravindra Singh never gave the Constable a chance to either detain or search him. Mr. Sharma has also complained about the learned trial Magistrate's assertion in his judgment that there was a legal duty on the part of Ravindra Singh to co-operate with the Constable. Whilst I agree that there was no such legal duty (in the sense of assistance as opposed to obstruction), and even if there was any duty it was a social or moral one only, nevertheless it must be borne in mind that Ravindra Singh and his co-appellant were convicted not for their failure to co-operate with the Constable but for assaulting him in the due execution of his duty. I am clearly of the opinion that what Constable Durga Prasad was doing fell within both the general scope of his statutory powers and his common law duties. This is not to suggest that in the execution of his general duties the Constable's powers are unlimited. I am clearly of the view that his action did not amount to unlawful interference with the person's liberty or property. Further, it must also be borne in mind that not every trivial interference with the citizen's liberty or property amounts to a course of conduct sufficient to take the officer out of his course of his duties. This was stated in a recent appeal—*Donnolly v. Jackman* [1970] 1 W.L.R. 562. In this case whilst the defendant was walking along a pavement a police constable approached him to make enquiries about the offence which he had reason to believe might have been committed by the defendant. The defendant ignored the Constable's request to stop, and it became apparent to the officer that the defendant had no intention of stopping. He touched the defendant on the shoulder intending to stop him to speak to him but not to charge him or arrest him and the defendant struck the officer. The defendant was charged with assaulting the Constable in the execution of his duty and he was convicted. In dismissing the defendant's appeal the Queen's Bench Division held that in seeking to stop the defendant in order to speak to him the police officer was not acting outside the ambit of his duty and, accordingly the assault by the defendant took place when the officer was acting in the execution of his duty.

I have no hesitation whatsoever in holding that when Constable Durga Prasad was assaulted by the appellant in the circumstances outlined by the trial Magistrate he was acting in the due execution of his duty. The assault by the first appellant Dushyant Singh was not only completely unwarranted but was in fact of a wanton nature.

This appeal against conviction by both appellants is therefore dismissed. As regards appeal against sentence I can find no reasons whatsoever in interfering with the sentence imposed on each appellant. The appeal against the sentence is also dismissed.

Appeals dismissed.