

suit or the presentation of an appeal, and the guardian can be nominated and appointed subsequently. The guardian *ad litem* of the minor is also one of the respondents and the respondents are represented in this Court by counsel. We therefore overrule the objection and grant the application.

[*The remainder of the judgment is not required for the purpose of this report—ED.*]

A. N. C.

Appeal accepted.

REVISIONAL CRIMINAL.

Before Mr. Justice Martincau.

ACHHRU RAM AND OTHERS—Petitioners

versus

THE CROWN—Respondent.

Criminal Revision No. 1684 of 1925.

Indian Penal Code, 1860, section 99—whether applicable where the public servant acted illegally—Indian Income Tax Act, XI of 1922, section 22 (4)—Income Tax Officer can call for production of accounts, but cannot insist upon their production.

An Income Tax Officer is empowered, under section 22 (4) of the Indian Income Tax Act, to serve the proprietors of a firm with a notice to produce their accounts, but there is no provision of law by which he can insist on their producing the accounts if they decline to comply with the notice.

Where, therefore, an Income Tax Officer entered upon the petitioners' premises in order to inspect their accounts and remained on the premises for that purpose against the will of the petitioners, his act amounted to criminal trespass, and the petitioners were within their rights in forcibly ejecting him when he refused to leave. Section 99 of the Indian Penal Code would not deprive petitioners of their right of private defence as the Income Tax Officer's proceedings were wholly illegal, and he was not acting in good faith under colour of his office.

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Haq Dad v. Crown (1), referred to.

Application for revision of the order of Rai Bahadur Lala Sri Ram, Poplai, Sessions Judge, Karnal, dated the 18th August 1925, affirming that of Raja Gulnawaz Khan, Magistrate, 1st class, Karnal dated the 30th June 1925, framing a charge against the petitioners.

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AZIZ AHMAD and BALWANT RAI, for Petitioners
ANANT RAM, for Complainant,
Nemo, for Crown, Respondent.

The judgment of the Court was delivered by—

MARTINEAU J.—The petitioners, who have been charged by a Magistrate at Karnal with offences under sections 353 and 147, Indian Penal Code, apply to have the charges quashed on the ground that the statement of *Sardar* Gurbakhsh Singh, on whose report the proceedings against them were initiated, shows that they committed no offence.

The material facts as they appear from the statement in question are as follows. *Sardar* Gurbakhsh Singh, who is an Income Tax Officer, went on the morning of the 13th January last to inspect the accounts of the cotton factory belonging to the firm of Rikhi Ram-Kundan Lal at Kaithal, with a view to assessing the firm with income-tax. He went into the factory, where he met *Lala* Achhru Ram and *Lala* Ram Gopal, sons of the proprietors of the factory. He asked *Lala* Ram Gopal to show him the accounts, and *Lala* Ram Gopal went into the office room and brought out 3 books, which he handed to the Inspector who was with *Sardar* Gurbakhsh Singh, and the Inspector made them over to the orderly. *Sardar* Gurbakhsh Singh then proceeded with the Inspector,

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the orderly, and *Lala Ram Gopal* towards the gate with the object of examining the books at the Dāk Bungalow. *Lala Achhru Ram*, however, called *Lala Ram Gopal* and spoke to him, and the latter then came back to *Sardar Gurbakhsh Singh* and said they could not show the books in the absence of the *munim*, and asked to be given a few days' time. *Sardar Gurbakhsh Singh* agreed to give time till the 21st or 22nd January, but asked *Lala Ram Gopal* to make a statement with regard to the date or to put in a formal application so that the time might be extended. *Lala Achhru Ram* said that they would not do this, and asked for the return of the *bahis*, which he said *Sardar Gurbakhsh Singh* had no power to take. *Sardar Gurbakhsh Singh* remonstrated with him and *Lala Ram Gopal*, but to no purpose, and he then got the Inspector to draw up an order under section 37 (b) of the Income-Tax Act, in which they were required to produce at once all the accounts for the years 1922-23 and 1923-24 for examination. The order was presented to *Lala Achhru Ram* and *Lala Ram Gopal*, but they refused to take it, and on its being read out to them *Lala Achhru Ram* forcibly took the 3 *bahis* from *Sardar Gurbakhsh Singh's* orderly. *Sardar Gurbakhsh Singh* told the Inspector to go and ask the Deputy Superintendent of Police to make *Lala Achhru Ram* and *Lala Ram Gopal* understand their legal position. The Inspector went away, while *Sardar Gurbakhsh Singh* and the orderly waited in the factory. *Lala Achhru Ram* ordered *Sardar Gurbakhsh Singh* to leave the factory. The latter replied that he would not leave as he had come there in the discharge of his official duties. *Lala Achhru Ram* repeated his order once or twice, and then called a number of *palladars* and got them to turn *Sardar Gurbakhsh Singh* out by force. It is that forcible

ejection of *Sardar* Gurbakhsh Singh from the premises that forms the basis of the charges framed by the Magistrate.

Now although *Sardar* Gurbakhsh Singh was empowered under section 22 (4) of the Income Tax Act to serve the proprietors of the firm with a notice to produce their accounts there is no provision of law by which he could insist on their producing the accounts if they declined to comply with the notice, but the procedure to be followed in that event is laid down in section 23 (4) of the Act. Nor had *Sardar* Gurbakhsh Singh any 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. He put himself in the wrong in two ways after *Lala* Achhru Ram had taken back the account books from the orderly, first, by sending for the Deputy Superintendent of Police with the apparent intention of intimidating *Lala* Achhru Ram, and, secondly, by remaining on the premises after *Lala* Achhru Ram had told him to leave. His act appears to have amounted to criminal trespass, and *Lala* Achhru Ram was within his rights in forcibly turning him out when he refused to leave. Section 99 would not deprive *Lala* Achhru Ram of his right of private defence, as *Sardar* Gurbakhsh Singh's proceedings were wholly illegal, and he was not acting in good faith under colour of his office. On this point see *Haq Dad v. Crown* (1).

Holding therefore that the petitioners committed no offence I accept their application and quash the charges framed by the Magistrate.

A. N. C.

Revision accepted.

(1) (1925) I. L. R. 6 Lah. 392.