

MUMBA v THE PEOPLE (1967) ZR 60 (HC)

HIGH COURT

EVANS J

28th APRIL 1967

Flynote and Headnote

[1] Criminal law - Obstruction of police officer in course of duty - Refusal of person in lawful custody to allow fingerprints to be taken - Section 222 (b) of Penal Code construed.

A person in lawful custody who refuses to allow his fingerprints to be taken is guilty of obstructing a police officer in the course of his duty when the only reason for the refusal is a denial of the charge for which he is arrested.

[2] Criminal procedure - Fingerprints - Taking fingerprints of suspect in lawful custody - Policeman's ignorance and misrepresentation of charge against accused irrelevant - Section 17 of Police Act construed.

The power of the police, pursuant to section 17 of the Police Act of 1965, to take the fingerprints of a person in lawful custody, is unaffected by either the ignorance of or the misrepresentation of the charge against the suspect by the officer attempting to take the fingerprints. 25

Statutes construed:

Zambia Police Act (No. 43 of 1965), s. 17.

Penal Code (1965, Cap. 6), s. 222 (b).

Appellant in person.

Chuula, Director of Public Prosecutions, for the respondent

Judgment

Evans J: The appellant was tried and convicted on a charge, under section 222 (b) of the Penal Code, of obstructing a police officer in the execution of his duty. The gravamen of the charge was that, on the 24th February, 1967, at Fort Jameson Police Station, he refused to have his fingerprints taken. On the 16th March, and after he had admitted nine 35 previous convictions (eight for offences involving dishonesty and one for assaulting a police officer), he was sentenced to one month's I.H.L. with effect from the 24th February. He now appeals against conviction.

The appellant has filed no proper ground of appeal and has put forward nothing today. I have carefully considered the trial record and the 40 relevant law, and I can see no reason to disturb the conviction.

[1] [2] Section 17 of the Zambia Police Act, 1965 (operative since the 4th March, 1966) empowers a police officer of or above the rank of sergeant to take, or cause to be taken in his presence, for the purpose of

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record and identification, the fingerprints of any person in lawful custody. It was undisputed that the appellant was in custody at the police station on the 24th February and that he refused to allow Detective Constable Kumasa to take his fingerprints. The constable was acting under instructions from and in the presence of Detective Sub. - Inspector Mwakapikisha, 5 who had arrested the appellant the previous day on a charge of being in possession of property reasonably suspected of having been stolen, on which charge a person may lawfully be arrested without a warrant. The appellant was therefore in lawful custody and obliged to give his fingerprints, and the facts that the said constable did not know precisely upon 10 which charge he had been arrested and that he told him that he wanted to take his fingerprints in connection with a charge of "using abusive language", are, in my judgment, irrelevant. Indeed, the appellant told the lower court that he refused to give his fingerprints because he denied the charge for which he had been arrested. Whether or not he denied that 15 charge, he was in lawful custody on it, and Sub. - Inspector Mwakapikisha and the said constable were acting in the lawful execution of their duty in seeking to obtain the fingerprints, the appellant's refusal to give which amounted to wilful obstruction of the constable.

I observe that the word "wilfully" was wrongly omitted from the 20 particulars of offence, but in the circumstances of the case I do not consider that the omission has caused any miscarriage of justice (section 323 of the Criminal Procedure Code).

This appeal is dismissed.

Appeal dismissed 25