

Abdul Kareem Vs. State of Mysore

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Court : Karnataka

Decided On : Jul-29-1971

Reported in : 1972CriLJ217

Judge : C. Honniah, J.

Appellant : Abdul Kareem

Respondent : State of Mysore

Judgement :

ORDER

C. Honniah, J.

1. The petitioner-accused was convicted under Section 98 of the Mysore Police Act. 1963. hereinafter referred to as the 'Act' and sentenced to suffer R. I. for a period of three months, by the Judicial Magistrate, First Class (Traffic Court), Bangalore. The accused appealed to the Court of Session at Bangalore. By his judgment dated 7-7-1971, the First Additional Sessions Judge. Bangalore, confirmed the conviction and sentence and dismissed the appeal. This revision petition is directed against the conviction and sentence passed against the accused.

2. The accused was running a shop in Bangalore, wherein he was framing the photos. The charge against the accused was that there was reason to believe that

M, Os. 1 to 31 valued at about Rs. 10.000/- were stolen properties and since he failed to give a satisfactory explanation for their possession, he had committed an offence under Section 98 of the Act. That section reads:

98. Possession of Property of which no satisfactory account can be given - Whoever has in his possession or conveys in any manner, or offers for sale or pawn, anything which there is reason to believe is stolen property, or property fraudulently obtained, shall, if he failed to account for such possession or act to the satisfaction of the Magistrate, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees or with both.' The courts below found the petitioner guilty of the offence with which he has charged on the basis that there was reason to believe that the articles which were in the possession of the accused were stolen properties and that the accused had failed to account for such possession.

3. The main evidence on which the prosecution case is founded consists in the testimony of P. W. 3 Sri Nanjunde Gowda, Sub-Inspector of Police of Shoolay Police Station. He has deposed that there were number of theft cases reported in the limits of Shoolay Police Station and during the course of investigation in those cases he suspected the accused. Therefore, he wanted to search the house of the accused. He requested P. W. 1 Nagarajiah, Sub-Inspector of Police. Vyalikaval Police Station, in whose jurisdiction the accused was residing, to search the house of the accused. Accordingly, Nagarajiah searched the house of the accused, on 20-8-1968 when the accused was absent and seized M. Os. 1 to 5. which were produced by the mother-in-law of the accused from a box. Later, on 12-9-1968 he arrested the accused and on 13-9-1968, it appears, the accused gave information on the basis of which Mos. 6 to 31 were seized from the shop of the accused. The evidence of Nanjunde Gowda shows that he tried his best to secure the owners of the articles seized from the house and shop of the accused, but he was unable to find them out. For nearly 2 1/2 years, no case was filed against the accused either under Section 98 of the Act or under Section 411 I. P. C. Apparently, Narvjunde Gowda must have tried during this long interval of time to find out the owners of these articles, but he failed in that attempt. After a long lapse of time since the articles in question were seized, a case was put up against the accused on the

allegation stated above. The courts below took into consideration that the accused was a previous convict and that he had no sufficient means to own these movable properties worth about Rs. 10,000/- and therefore came to the conclusion that the accused must have been in possession of these properties, regarding which there was reason to believe that they were stolen properties.

4. The accused claimed all these properties as his and stated when he was questioned under Section 342 Criminal P. C., that they were given to him by his father-in-law. In support of his case, he examined his wife Smt. Fathima (D. W. 1), who gave evidence to the effect that her father gave the jewels to her at the time of her marriage and that they were in her possession ever since her marriage. In her evidence she has stated that at the time her father died, he had left no property. The learned Sessions Judge, in his judgment, on this point observes:

This admission of D. W. 1 is itself sufficient to negative her claim that all these properties attached under Exs. P-2 and 3 belong to her father and he had given them to her at the time of her marriage.

Having held this, he further held that the evidence of D. W. 1 is interested and cannot be relied upon to hold that these valuable properties belonged to her as having been given by her father at the time of her marriage.

5. Regarding the seizure of the articles M. Os. 1 to 5 the evidence on behalf of the prosecution itself is that they were produced by the mother-in-law of the accused from a box and that they were seized by P. W. 1 Nagarajaiah. It is not disputed that the mother-in-law at the relevant time was living in the house of the accused. At the time of seizure, the wife of the accused was present, but the accused, according to the investigating officer, was not present. It is not necessary to prove physical possession of the goods by the accused; it is sufficient if it is proved that they were under his absolute control or that he was in joint possession with another person. Mere recovery of certain articles from the house belonging to the accused, in which according to the prosecution, 8 to 9 persons were living, will not lead to a presumption that the property was in the actual possession of the accused where the property, is recovered from a family house in occupation of several members, there is no presumption without evidence that the place of

recovery was in the exclusive possession of the accused. In the absence of any evidence to show that the box, from which MOs. 1 to 5 were produced by the mother-in-law of the accused, belonged to the accused, no presumption could be raised that the accused was in possession of those articles.

6. So far as articles M. Os. 6 to 31 are concerned, it is not disputed by the prosecution they were seized from the shop of the accused. The accused has claimed all these properties as his and to. probabilise his case; he has let in some evidence. In order to come to the conclusion that these articles were stolen properties, or regarding which there was reason to believe that they were properties, no evidence has been let in, except the two circumstances mentioned above. The prosecution must prove that the articles in question were in the possession of the accused, regarding which there Was reasonable belief that they were stolen; properties. If that onus is discharged, then only the burden is cast upon the accused to explain the circumstances under which he came to be in possession of the articles.

7. Mr. Laxmeshwar, appearing on behalf of the State, contended, relying upon the words occurring in Section 98 of the Act namely, 'reason to believe', that taking into consideration the evidence of the investigating officer and the other circumstances, the only inference that could be drawn is that the accused was in possession of the articles in question, about which there was reason to believe that they were stolen properties. Section 26 of the Indian Penal Code provides that 'A person is said to have 'reason to believe' a thing if he has sufficient cause to believe' that thing but not otherwise'. If the circumstances are such that a. reasonable man would be led by a chain of probable reasoning to the conclusion or inference that the articles that were found in the possession of the accused were stolen properties, although the circumstances may fall short of carrying absolute conviction to his mind on the point, a person must be held to have 'reason to believe'. The investigating officer in this case does not say that, even taking into consideration the explanation offered by the accused, he had reason to believe that the articles in question were stolen properties. Now is there any material on the basis of which the court can hold that there was reason to believe that they were stolen properties, and therefore : the Investigating officer seized

them.

8. In this case, the accused has given some explanation, which cannot be rejected as wholly untrustworthy. Assuming for the sake of argument that the explanation the accused has offered is not true, can he be convicted under Section 98 of the Act on the mere fact of seizure of certain articles from his possession? If the prosecution have failed to establish that the articles that were found in the possession of the accused, regarding which there was every reason to believe that they were stolen properties, no burden is cast upon the accused to offer an explanation. There is no satisfactory evidence that the accused was a previous convict elsewhere. But he had been convicted for theft by the time this case was decided. That circumstance and the other circumstance that he was a man of meagre income, taking into consideration the number of people he had to maintain, are not enough to come to the conclusion that the accused was in possession of stolen articles,

9. In the above circumstances, the conviction of the accused and the sentence passed on him cannot be sustained and they are accordingly set aside and the accused is acquitted.

10. The articles in question, namely, M. Os. 1 to 31 are ordered to be confiscated, by the courts below. That order is also set aside, with the direction that they shall be returned to the accused.