

In Re: K. Ramaswamy

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Court : Andhra Pradesh

Decided On : Nov-03-1955

Reported in : 1956CriLJ971

Judge : Chandra Reddy, J.

Appellant : In Re: K. Ramaswamy

Judgement :

ORDER

Chandra Reddy, J.

1.The petitioner has been convicted by the Addl. First Class Magistrate, Nellore, under Section 19(f), Indian Arms Act. The case against him was when his house was searched on 12-10-1954 by the Police two live-cartridges were found in a deal-wood box. The plea of the accused was that he had no knowledge of the existence of these cartridges in his house and a nephew of his who was living with him and a young boy had picked them up from the neighbouring field and kept them there.

The trial Court reached the conclusion that the petitioner was guilty because it was not prepared to believe that these cartridges were found in the circumstances mentioned by the petitioner. The petitioner was convicted and sentenced to a fine of its. 15/-.

2. The conviction seems to be unsustainable. From the mere fact that the petitioner was the head of the family, it should not be presumed that he was aware of the two live-cartridges being in the house. There is no presumption that when some incriminating articles are found in a house in which a number of persons reside, the articles could be said to be in the exclusive possession of any particular member, nor any presumption that the possession was that of the head of the family. The possession contemplated in Section 19(f), Indian Arms Act is conscious possession.

To hold it otherwise would result in disastrous consequences. If an incriminating article is brought into the house either by some urchin or left there by some unknown person, the head of the family runs the risk of being prosecuted although he was not aware of such a thing and was not in any way responsible for the act. Though the contrary view was taken in some of the earlier decisions the trend at the current opinion is in favour of the proposition stated above.

This point was discussed at some length by Harries C.J. in - 'Emperor v. Santasingh' 1944 Lah 339 (AIR V 31) (A). The opinion expressed there was that where the evidence does not point to the possession or control of any individual member of a house-hold the managing member of the family is in the same position as any other member and unless the prosecution is able to establish that he was conscious of the existence of the articles in the house he could not be convicted.

3 The principle enunciated in the decisions of other High Courts is in agreement with this rule: vide - 'Mohan Lahiri v. The King' : AIR1950 Pat243 ; - 'Sughar Singh v. Rex' : AIR1950 All277 ; - 'Abdul Rahim Khan v. King Emperor' 1949 Nag 289 (AIR V 36) (D); and - 'Norendra Nath v. The State' : AIR1951 Cal140 .

It follows that the prosecution has to establish that the possession was that of the person who is sought to be made liable and it is not for the person who is charged with the offence to make out a case of want of knowledge on his part.

Even if there is any such obligation on the part of the head of the family and the case comes under Section 106 of the Evidence Act, in this case the burden has

been satisfactorily discharged and the evidence of D. W. 1, a young boy of 13 years makes it abundantly clear that it was he that was responsible for this mischief. It is unlikely that the petitioner would have kept these two live-cartridges in his house when it is not shown that he had any weapon for using these cartridges.

The Sub-Inspector of Police has admitted that there were 19 licencees of guns and that they would be often shooting birds in the fields adjoining the house of the petitioner. The probability leans in favour of the version given by D. W. 1. In any view of the matter, the conviction of the petitioner cannot be sustained. It is therefore set aside and the fine, if paid, will be refunded.

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