

Chhotey Vs. Emperor

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Court : Allahabad

Decided On : Jun-16-1922

Reported in : AIR1923All33; 69Ind.Cas.457

Judge : Ryves, J.

Appellant : Chhotey

Respondent : Emperor

Judgement :

Ryves, J.

1. The Kotwal of Cawnpore, having reason to suspect stolen property to be in possession of Chhotey, searched his shop in the Bazar, in Cawnpore. Chhotey had been absent from Cawnpore for some days. Husaini, a servant of Chhotey, was in charge of the shop. The Kotwal found a pistol lying on the floor of the shop. Both Chhotey and Husaini, his servant, were tried for an offence under the Arms Act and were both, convicted by the Magistrate who sentenced them to pay a fine of Rs. 20 each. They applied for revision to the Sessions Judge who upheld the conviction of Husaini but has referred the case of Chhotey to this Court with a recommendation that the conviction and sentence be set aside. The Magistrate convicted Chhotey, holding that under Section 27 of the Indian Penal Code the pistol being in the possession of his servant, Husaini, must be considered to have been in Chhotey's possession. The learned Sessions Judge points out that the

Magistrate has apparently overlooked the important words in Section 27, viz., that the possession of the servant must be on account of his master to make the master liable. I notice that, in his judgment, the Magistrate says 'the shop and its contents, whatever these were, ' were in Husaini's possession on account of his matter Chhotey; and in his explanation, he says: 'The pistol was found lying openly in the shop in what I gathered to be much the same way as the other articles in the shop...so I regarded the pistol as part of the general property of the or. ' I have searched through the record from end to end and I cannot find any reference to what kind of shop this was or what sort of goods were sold in it. At any rate, there is nothing to show that a pistol was a sort of article that, one, could reasonably expect to be for sale, in the shop.. I, therefore agree with the learned Successors Judge in holding that it (sic) did not prove that the possession by Husaini of this pistol was possession on account of Chhotey, I, therefore, accept the reference, set aside, the conviction and sentence and direct the, fine, if paid, to be refunded.

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