

Queen-empress Vs. Venkatasami

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Court : Chennai

Decided On : Nov-13-1890

Reported in : (1891)ILR14Mad229

Judge : Arthur J.H. Collins, Kt., C.J. ;and Weir, J.

Appellant : Queen-empress

Respondent : Venkatasami

Judgement :

1. The accused, in this case, was in the employ of the Post Office at Berhampore, and the facts found are that, on the arrival of the mail, he assisted the sorting clerk in sorting letters, and that, while so doing, he was observed to secrete two letters in his cloth. The head clerk called the Postmaster and accused was searched. Two bearing letters were found in his cloth. When questioned, he said that he intended to give them to the delivery peon, and to share with him the bearing postage, which the latter would collect. The Senior Assistant Magistrate, before whom the accused was charged, was of opinion that the accused did not intend to fraudulently appropriate the letters, nor did he wilfully secrete them, the words implying, in the Magistrate's opinion, wilful intention to keep the letters out of the possession of the addressees and not covering the action of the accused.

2. The Magistrate observed also that the accused was originally charged with theft, but, as there was no intention to take away the letters and thereby cause

gain to himself, the accused was not guilty of this offence.

3. The Magistrate accordingly discharged the accused under Section 253, Criminal Procedure Code.

4. The District Magistrate submits that the order of the Senior Assistant Magistrate, discharging the accused, is erroneous in law.

5. The prosecution, we observe, was brought under Section 48 of the Indian Post Office Act, the material words of which, in so far as we are concerned with the section in this case, are as follows:

6. 'Whoever, being in the employ of the Government, in the Post Office ' Department, shall steal, fraudulently appropriate, or wilfully secrete, destroy ' or throw away any letter or other article sent by post, &c;, shall be punished ' with imprisonment of either description for a term not exceeding seven years ' and shall also be liable to fine.'

7. We are of opinion that the view of the Magistrate that the accused did not intend to wilfully secrete the letters within the meaning of the section is correct on the facts found. The words in question appear to us to be directed to such a secreting or concealment of letters as would frustrate or tend to frustrate their delivery to the addressees.

8. We are of opinion, however, that the accused was otherwise liable under the section, and that the discharge is erroneous for the following reasons:

9. The intention of the accused was admittedly a dishonest intention, viz., that of causing wrongful gain to himself and wrongful loss to the Post Office. To carry out that intention, he, for the time being, took the letters into his own personal possession and out of the possession of the Post Office, or, in other words, he appropriated the letters. The letters were, until delivery, property to the possession of which the Post Office was entitled and should have been handed over in the ordinary course to the delivery peon, whose possession would, of course, in point of law, have continued to be that of the Post Office until such time as the letters were delivered. The accused, by taking possession of the letters with the

dishonest intention which he admitted, was guilty, we consider, of the offence of stealing and of fraudulently appropriating the letters within the meaning of the section, and also of the offence of theft and of attempt to commit dishonest misappropriation of property within the meaning of the Penal Code.

10. For these reasons, we are of opinion that the discharge of the accused was erroneous in law, and we accordingly set aside the order of discharge and direct that the accused be retried by the Senior Assistant Magistrate, Ordered accordingly.

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