

In Re: Ramaswami and anr.

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SooperKanoon Citation : sooperkanoon.com/784726

Court : Chennai

Decided On : Aug-22-1946

Reported in : AIR1947Mad195; (1946)2MLJ435

Appellant : In Re: Ramaswami and anr.

Judgement :

ORDER

Yahya Ali, J.

1. The conviction of the petitioners rests entirely on the evidence of the seizure of one bale of piece goods from the house in which they were living. It would appear that the seal of a railway wagon was found broken and tampered with on 4th July, 1945, and when the contents were verified two bags of areca nuts and a bale of piece goods were missing. So far as the areca nuts are concerned both the Courts below have absolved the petitioners and it is not necessary to go into that part of the case. The piece goods bale is said to have been recovered from the petitioners' house on 7th July, 1945 and it is alleged that the seizure was made on information given by the first accused. The evidence relating to the seizure of the articles is somewhat thin. It consists of the evidence of the Head 'Constable P.W. 10 and P.W. 10's case is that he arrested the petitioners on the railway platform and on information obtained from them he went to the house of the petitioners and found there the bale of piece goods (M.O. 2 series) and seized the same. When P.W. 10 examined the accused it was easy for him to secure the presence of the

station masters. He could also have taken them along with him when he went to the house of the petitioners, but he did neither of these things. On the other hand, he did it all on his own and it is only when the seizure was made and he produced the petitioners along with the bale of piece goods on the platform that the two station-masters P.Ws. 5 and 6 were called in to attest the Mahazar that was then prepared. This procedure does not appear to be perfectly regular or at all events satisfactory. Apart from this aspect of the matter, there is one other important consideration. It is not clear from the evidence whether the petitioners 1 and 2 who are admittedly brothers were undivided or whether in that house where the alleged stolen property was discovered there were present persons other than the two petitioners. The mere recovery of certain property from the house in which the two petitioners lived is not sufficient by itself to attribute guilty knowledge to either of them unless there were some other circumstances connecting them with the possession of the property. There is no such circumstance in this case except the alleged statement or information given to the Head Constable. There is really no evidence with regard to that. All that the Head Constable says is that he proceeded to the house of the petitioners on information. What that information was is not disclosed. The Mahazar itself is clearly not admissible in evidence, because it was prepared after the property was found in the house and it was produced by the Head Constable along with the petitioners at the platform. The mere fact of such production in those circumstances shows nothing and does not establish any connection of either of the petitioners with the possession of the stolen properties. This is thus a case where there is hardly any legal evidence against the petitioners on which a conviction under Section 411, Indian Penal Code, could be based. Giving them the benefit of this finding, the application is allowed and the convictions and sentences are set aside. The fine, if paid, will be refunded.