

In Re: Ethirajan

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Court : Chennai

Decided On : Apr-01-1954

Reported in : AIR1955Mad264; 1955CriLJ816

Judge : Somasundaram, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 95 and 379

Appeal No. : Criminal Revn. Case No. 30 and Criminal Revn. Petn. No. 30 of 1954

Appellant : In Re: Ethirajan

Advocate for Pet/Ap. : V.A.P. Coelho, Adv.;Asst. Public Prosecutor

Judgement :

ORDER

Somasundaram, J.

1. The petitioner in this case has been convicted of theft and sentenced to rigorous imprisonment for two months.
2. The facts that led to his conviction are these The accused was a filing clerk in the record room of the office of the Imperial Chemical Industries. (India) Ltd., Madras, He had put in a service of 25 years. He owed a sum of Rupees 3000 to one Durairajan who was examined as P. W. 4 and as the said Durairajan pressed

the accused to clear the loan, the accused on 25-4-1953 gave a cheque dated 22-4-1953 drawn by him on the Ootacamund Chemical Disbursement Account of the Imperial Chemical Industries with the Ootacamund branch.

This cheque was found to be not a genuine cheque and P. W. 4 addressed a letter to the Imperial Chemical Industries bringing to their notice the conduct of the accused. A search was made of the cheque book in the records of the office and the cheque book could not be found. A complaint was thereupon made and it was found that this accused had extracted the cheque book from the record room where the book was kept.

3. P. W. 2 the Chief Cashier of the Imperial Chemical Industries says in his evidence that the Ootacamund Chemical Disbursement account was closed in 1944, that he was not asked to return the unused leaves to the bank, but that the cheque book was kept in the record room. He admits that the cheque book is of no value after 1944 and that the only thing that the company is likely to suffer by the loss of the cheque book which may likely to be used appears to be the loss of reputation. He admits that the cheque book cannot be signed except by 'per bro' and the accused has nothing to do with drawing of cheques.

4. In view of the evidence that the account has been closed and that the cheque book is of no value whatsoever, the question arises whether the accused who is said to have taken the cheque book leaves can be said to be guilty of the offence of theft. Mr. Coelho appearing for the accused contends relying on the decision in - 'Emperor v. Preo Nath Chowdhry', 29 Cal 489 (A), that the accused is not guilty of any offence.

In 29 Cal 480 (A)', the facts were that the accused who was in the service of a company received from his employers some bags of waste paper with an order to take them to the company's yard and there to burn and destroy them. The accused instead, of destroying, those papers, brought some of them, to Bow Bazar evidently to make some money by the sale of those papers. He was prosecuted for breach of trust, an offence punishable under Section 408, I. P. C. The Honorary Presidency Magistrate was of the opinion that Section 95, I. P. C. applied to the facts of the case and referred the matter to the High Court pre-sumably under

Section 438, Cr. P. C. The learned Judges held, that Section 95, I. P. C. would have no application unless the act in question amounted to an offence under the Code but for the operation of that section. As regards the question whether the act committed in itself amounted to an offence under Section 408, I. P. C. following the decision in - 'Empress v. Wilkinson', 2 C WN 216 (B), the learned Judges held that the act did not amount to breach of trust.

5. As against this decision the learned Public-Prosecutor relies on two decisions (1) an English decision reported in - 'The Queen v. Walter Watts', (1850) 169 ER 398 (C). That is a case in which the accused received from the bank a cheque which was issued by their masters and was cashed, for the purpose of keeping this cashed cheque as part of the record. This he is said to have fraudulently destroyed. The question was whether the accused was guilty of any offence of larceny or embezzlement with regard to this cheque which he received on behalf of the directors, his masters. They held that this was property and the accused was guilty of larceny. (2) A decision of Allahabad High Court

- 'Emperor v. Maula Baksh', 27 All 28 (D). There a cancelled cheque was held to be property in respect of which an offence under Section 408, I. P. C, could be committed. They add: 'The question of value, except so far as S, 95 is concerned, appears quite immaterial and the conviction under Section 408, I. P.- C. is good and sound conviction.'

6. The two decisions on which the learned Public Prosecutor relies indicate no doubt that every valueless paper that comes into the hands of an accused may be still property in respect of which either criminal breach of trust or theft may be committed. Agreeing with these decisions I must hold in this case also that it would be property in respect of which an offence could be committed. But in view of the fact that this property has absolutely no value as spoken to by P. W. 2, I think Section 95, I. P. C. must be made applicable to the facts of this case and I acquit the accused.