

In Re: Abdul Azeez

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Court : Chennai

Decided On : Sep-13-1943

Reported in : AIR1944Mad59; (1943)2MLJ447

Appellant : In Re: Abdul Azeez

Judgement :

ORDER

Kuppuswami Ayyar, J.

1. The petitioner claims to be the owner of a cart which has been directed to be confiscated by the order of the Magistrate (the Fourth Presidency Magistrate) in C.G. No. 1305 of 1943. The accused in this case was charged under Section 65 of the City Police Act in connection with some hides which he was found carrying in a cart. It was suspected that the hides were either stolen property or property fraudulently obtained and since he did not explain how he came to be in possession of them he was convicted under Section 65 of the City Police Act. While convicting him the cart as well as the hides were directed to be confiscated. He was charged only in respect of the hides and not in respect of the cart, but all the same the Magistrate has directed the confiscation of the cart as well. The petitioner's case is that the cart belongs to him and that he hired it to the accused and therefore the order of confiscation will not be binding on him and wants the cart to be delivered over to him. The learned Crown Prosecutor is not able to point out any other provision of law for justifying this order of confiscation except Section

517 of the Code of Criminal Procedure. That section deals only with property produced before the Court or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence. Under it the Court has jurisdiction to order disposal of property by destruction, confiscation and delivery to any person claiming to be entitled to possession or otherwise of any such property. The offence being only in respect of the hides there was no justification for passing an order, in respect of this cart, confiscating it. The only order that ought to have been passed was an order directing the return of the same to the accused from whose possession it was seized but no such order has been made.

2. The order of the lower Court confiscating the cart is set aside and the Magistrate is directed to hold an enquiry after notice to the accused as to whether the cart belongs to the petitioner or not and pass the necessary orders with regard to the same.

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