

In Re: Ramakkal and ors.

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Court : Chennai

Decided On : Sep-23-1937

Reported in : AIR1938Mad172; 173Ind.Cas.317; (1937)2MLJ734

Appellant : In Re: Ramakkal and ors.

Judgement :

ORDER

1. This is a revision petition asking the Court to quash a charge framed under Section 411, Indian Penal Code, against three persons.
2. The facts appear to be as follows:
3. P.W. 2 while waiting to deposit money into the bank at Gopichettipalayam lost from his shirt pocket four currency notes of the value of one hundred rupees each.
4. He noticed this loss at about 10 A.M.
5. The four notes were picked up in the street by P.W. 6--a child of six. P.W. 6 gave a young friend of his (P.W. 7) one note, but P.W. 7 was insisting on getting two. Their wrangles attracted the attention of a passing barber (P.W. 4) who snatched all four notes from them. The children clamoured for the return of the notes and held his coat, but the barber took them with him to hand them and the money to P.W. 6's father whom he knew. On the way he met P.W. 6's grandmother (accused 1). She asked where he was taking P.W. 6 and on being told the facts, she claimed a prior right to these notes. So) P.W. 4 handed over the

four notes to her, but he went on, and told P.W. 6's father (accused 2) what had happened. Accused 2's employer (accused 3) also heard the story from the barber.

It appears that accused 2 and accused 3 then sent for accused 1 and each of them took one one hundred rupee note from her.

6. P.W. 4 came back later to accused 3's shop in which accused 2 is employed and was paid Rs. 20 by accused 3 as a regard for his pains and as an inducement to keep his mouth shut.

7. Meantime, the owner of the notes (P.W. 2) was making enquiries and had got a policeman to help him in his search. Some people fortunately for the owner had seen the barber (P.W. 4) take the notes from the children. The barber (P.W. 4) was soon found and he referred the policeman to the boy's grandmother. When first questioned P.W. 6's grandmother (accused 1) denied all knowledge, but later she produced two currency notes of one hundred rupees each. Accused 2 (P.W. 6's father) produced one hundred rupee note and also a ten rupee note. These notes were recovered by 12 noon, that is, within two hours. At 3 P.M. accused 3 was questioned and at first he denied all knowledge but as soon as he was arrested, produced the last of the hundred rupee notes. This last note was recovered by 3 P.M.

8. Assuming these facts to be true, the question arises, what, if any, offence has been committed.

9. Explanation 2 to Section 403, Indian Penal Code, lays down the law in regard to property found. A very high standard of honesty is demanded of the finders of lost property. Before appropriating it, they must attempt to find the owner, if they have means of so doing. If there is no clue to the owner, the finder must use all reasonable means to find the owner and must wait a reasonable time to allow the owner to claim the property before he appropriates it.

10. Now it is clear, if the facts stated above are proved, that there was a dishonest intention to appropriate the notes, an intention shared by all three accused, just as

the notes were shared.

11. The difficulty is to say whether appropriation or conversion to their own use had actually taken place, whether the matter went beyond the stage of intention and preparation. I must leave this difficult question to the learned Magistrate to decide for himself after hearing all the evidence. Perhaps the best defence to a charge of criminal misappropriation in these circumstances would be to admit dishonest intention and even preparation to commit criminal misappropriation but to deny actual appropriation or conversion, and to plead in extenuation that the standard set for the finders of money is much above the standard of popular opinion.

12. I must dispose of this revision petition with the remark that the charge framed under Section 411, Indian Penal Code, is inapplicable to the facts and tends to obscure the real issue. If the prosecution satisfactorily proves the facts extracted above and if the learned Magistrate is able to find after hearing the defence case that actual appropriation of the notes was complete or that the accused actually converted the notes to their own use, then the offence committed by all three accused is clearly the offence of criminal misappropriation, the charge under Section 411, Indian Penal Code, is hereby quashed and the Magistrate is directed to make further enquiry into this case and to consider in the light of the above remarks whether he should frame a charge under Section 403, Indian Penal Code, or discharge the accused. Nothing that I have said should prejudice the Magistrate in deciding one way or the other in this matter.

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