

In Re: T.R. Srinivasa Row

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Court : Chennai

Decided On : Nov-18-1927

Reported in : (1928)54MLJ607

Appellant : In Re: T.R. Srinivasa Row

Judgement :

ORDER

Kumaraswami Sastri, J.

1. In this case the petitioner who is a Sub-Postmaster was convicted of temporary misappropriation of a sum of Rs. 60. The charge against him is that he misappropriated three sums of 6 annas, Rs. 58-11-0 and Rs. 113-5-0. The Joint Magistrate found that the charge was not proved as regards 6 annas and Rs. 58-11-0. As regards Rs. 113-5-0 he found that the charge was proved. On appeal the Sessions Judge was of opinion that misappropriation at least to the extent of Rs. 60 was proved and confirmed the sentence.

2. The chief evidence on which the accused has been convicted is his confession contained in Exhibit B that Rs. 91-15-6 was -short. He goes on to say that he was in bad health for sometime, that he was not verifying the accounts and cannot explain how the shortage came. There is no evidence that the statement as to his ill-health is not true. If accused is to be convicted on his confession it must be taken as a whole and it would be unsafe to use the part against him and discredit

the part in his favour. I need only refer to Pika Bewa v. Emperor ILR (1912) C 855 and Wafadar Khan v. Queen Empress ILR (1894) 955. Apart from Exhibit B, there is no evidence that the accused misappropriated the money.

3. In a case somewhat similar to the present one where a Secretary to a Co-operative Society was not able to account for Rs. 100, it was held by Jackson, J., that there was 'no conclusive presumption of dishonesty or indeed any legitimate presumption under Section 114 of the Indian Evidence Act'.

4. I do not think Exhibit B can be made a safe ground for a conviction under Section 409 of the Indian Penal Code.

5. I reverse the conviction and sentence and direct that the fine, if paid, be refunded.

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