

In Re: Murugan Alias Thannasi

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Court : Chennai

Decided On : Feb-07-1957

Reported in : AIR1958Mad451; 1958CriLJ1196

Judge : Ramaswami, J.

Appellant : In Re: Murugan Alias Thannasi

Judgement :

ORDER

Ramaswami, J.

1. This is a revision sought to be preferred against the conviction and sentence by the learned Sub-Magistrate of Udamalpet In C. O. No. 2776 of 1956 which were confirmed by the learned District Magistrate of Coimbatore in C A. No. 56 of 1957.

2. On information received apparently that the accused was indulging in illicit distillation activities the Sub-Inspector of Police, P.W. 1, proceeded to the village of the accused, arrested him and enquired him. The accused took the Sub-Inspector to a place in front of his house and pointed out a spot. It was dug up and M. O. 1 a pot with fermented wash kept buried' there was taken out. The accused was charged' for an. offence under Section 4 (1) (G) of the Madras Prohibition Act. The offence having been proven, the conviction and sentence of a fine of Rs. 8U followed.

3. The two points taken before me are that when the Sub-Inspector had proceeded to the village on information received apparently that the accused was indulging in illicit distillation activities, the information given by the accused to the Sub-Inspector leading to 'the discovery would amount to a repetition of the information already received which could not be considered as leading to a discovery coming within the purview of Section 27 of the Indian Evidence Act; and secondly that the place wherefrom the pot M. O. I was taken out was accessible to the public and therefore exclusive possession of this incriminating article cannot be brought home to the accused.

4. Point 1: There is no substance in this point because the information received apparently by the Sub-Inspector and which source he cannot be compelled to disclose was apparently general information of the illegal distillation activities of the accused. The particular discovery made was as a consequence of the information given by the accused and his pointing out the spot wherein he had buried M. O. 1 with fermented wash. But for this accused pointing out the spot the Sub-Inspector would never have been able to effect this recovery of M. O. 1. In fact the accused had all the wide open space of the village to secrete the pot with the fermented wash apart from other imaginable places where such secretion could be made. The Sub-Inspector might even spend weeks without being able to spot out this secret hiding place. In *Ramakrishna Mithanlal Sharma v. State of Bombay* : 1955 CriLJ196 , it was held that where evidence was given by a police officer that in consequence of a certain statement made by the accused and at the instance of the accused a tin box was dug out of a mud house and the nature of the statement made or information given by the accused was not sought to be proved (as here) Section 27 of the Evidence Act was not attracted and prima facie there was nothing to prevent the evidence being admitted against the accused concerned. *Durlay Nama Sudra v. Emperor* : AIR1932 Cal297 , was referred to. Point 1 fails.

5. Point 2: It is quite true that exclusive possession cannot be brought home to an accused if properties are discovered in open places equally accessible to members of the public as a result of the information given by him. *Public Prosecutor v. Pakkiriswami* A.I.R. 1929 Mad 846 : 1929 MWN 785 (C); *Ram Autar*

v. Emperor : AIR1925 All478 Amrit Sonar v. Emperor 20 Cri LJ 439 : A.I.R. 1919 Pat 330 (E); Mangalya Raglio v. Emperor Sohan Singh v. Emperor A.I.R. 1930 Lah 91 : 31 Cri LJ 774 (G); Gulsheru v. Emperor A.I.R. 1932 Sind 180 (H). But at the same time if the property is found to be so hidden away that no ordinary member of the public could know of its existence there, the fact that it is on that particular person's information and pointing out unaccompanied by any explanation of innocent knowledge the incriminating article was discovered and recovered would lead to the presumption that he is the person who had secreted it there.

It unmistakably shows that the accused was proceeding to the felony; Sher Mohd. v. Emperor A.I.R. 1945 Lah 27 at p. 32 (I); Mt. Jamunia Partap v. Emperor A.I.R. 1936 Nag 200 : 37 Cri LJ 1047 (J); pointing out is evidence of conduct under Section 8, Indian Evidence Act. Where an accused gives information leading to discovery, and the exact spot where the ornaments were buried is shown and the articles dug out by him . from beneath, the question is not so much whether the accused was in physical possession of the ornaments buried in the field, though as a matter of fact a person who buries treasure in a spot unknown to others is really in possession of it, Whether it is in a field accessible to every one or in his own house.

The Important point is that the circumstances and conduct of the accused point clearly to his knowledge of the exact spot where the ornaments were and, in the absence of any explanation the reasonable inference is that he put them there himself. Such conduct taken in conjunction with other evidence is enough to warrant a presumption of complicity in the offence A.I.R. 1936 Nag 200 (T). Similarly it was held in Lachhman Singh v. State : 1952 CriLJ863 , where though the several accused gave information that the dead bodies could be recovered in the Nala it was an indefinite information which could not lead to any discovery because the Nala was a stream which ran over several miles and it required the accused to follow it up by conducting the police to the actual spot where parts of the two bodies were recovered and the pointing out by the accused constituted the initial pointing out contemplated under Section 27 of the Evidence Act.

This Supreme Court decision *Lachhman Sing v. State (K)*, supersedes the Madias decisions to the contrary. Thus mere existence of other information by which discovery was facilitated does not make information under Section 27 inadmissible,. It depends on the circumstances of each case whether the discovery was really made in consequence of the information given by the accused: *Public Prosecutor v. India China Lingiah* : AIR1954 Mad433 . In fact the Supreme Court decision has gone to the extent, that with regard to the rule applicable to cases where there is clear and unimpeachable evidence as to independent and authentic statements of the nature referred to in Section 27 having been made by several accused persons either simultaneously or otherwise, some of the decided cases have gone further than is warranted by the language of Section 27 of the Evidence Act and may have to be reviewed on a future occasion.

There are decided cases: *Naresh Chandra v. Emperor* : AIR1942 Cal593 State Govt. *M. P. v. Chhotelal Mohanlal (S)* A.I.R. 1955 Nag 71 : 1955 Cri LJ 580 (N), whereunder it has been held that plurality of information received from a number of accused before discovery will not necessarily take any of these information out of the Section and the word 'a person' will take in more than one per-Eon and that information will be admissible against all the informants (for detailed discussion see *Corpus Juris of India, Evidence Act, Vol. II, by V. V. Chitale and S. Appu Rao* Section 27, N. 7 'Information by several accused' and *V. B. Raju, I. O. S. Evidence Act, Vol. I, page 190 (1955) 'Information from several accused.'*

6. Here it was the accused who must have buried the pot M. O. 1 with the fermented wash at the precise spot which he pointed out to the Sub-Inspector. Therefore point 2 also fails.

7. In the result, this revision case is dismissed.