

**Sathian Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/809983](http://sooperkanoon.com/809983)

**Court :** Chennai

**Decided On :** Feb-01-1971

**Reported in :** 1971CriLJ1635

**Judge :** K.N. Mudaliyar, J.

**Appellant :** Sathian

**Respondent :** State

**Judgement :**

ORDER

**K.N. Mudaliyar, J.**

1. The Sub Divisional Magistrate, in his appellate judgment, notices that P.W. 1 deposed that the petitioner knocked him and later he found the cash missing from his pocket. The petitioner was found about 12 days later with cash and jewels. The cash recovered from the petitioner is only Rs. 205, two one hundred rupee notes and five rupee note. Among other M. Os. recovered from him are M. Os. 1 and 2 which are only pieces of paper, Several other items are jewels. There is no evidence to prove that the jewels were purchased out of the stolen amount of Rupees 2417-10. The learned Sub Divisional Magistrate has fallen into a grievous error that there is burden on the petitioner-accused to explain as to how he got the cash and jewels. But the burden first rests on the prosecution to prove that the amount seized from the petitioner formed part of the property stolen from

P.W. 1. It is only after the initial burden has been discharged by the prosecution, there is burden cast on the petitioner to explain as to how he came to possess the cash and the jewels, That test has not been satisfied in this case. Both the Courts below have erred in coming to the conclusion that the petitioner committed theft of the cash as alleged. Even taking the entire evidence of P.W. 1 as acceptable that would give room for some suspicion against the petitioner. Certainly it would not amount to the proof of the sum of Rs. 2417-10 being stolen by the petitioner. I set aside the conviction and sentence under' Section 379 I.P.C. The accused-petitioner is acquitted, His bail bond is cancelled. M. Os. 1 to 11 will be returned to the petitioner. The criminal revision case is allowed.

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