

In Re T.C. Muthuswamy

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Court : Chennai

Decided On : Jun-16-1971

Reported in : 1971CriLJ1811; (1971)IIMLJ427

Judge : Somasundaram, J.

Appellant : In Re T.C. Muthuswamy

Judgement :

ORDER

Somasundaram, J.

1. Five bags of rice purchased at Ranipet in North Arcot District were transported through the T. V. S-lorry on the 22nd May 1966 under cover of a permit Ex. P. 1, purporting to have been issued by the District Supply Officer North Arcot, one Mr-Srinivasan, P. oW. 1. who was in charge of the checkpoint at Kannamangalam, suspected Ex. P. 1 to be a spurious permit. He unloaded, the bags, seized the permit and then sent a report to the Tahsildar., Investigation followed and P.W. 21, the Inspector attached to the Vigilance Cell, detected that the permit was a spurious one not issued by the District Supply Officer. P.W. 7., the broker who had purchased these bags on behalf of the person who actually transported them, pointed out the house of this petitioner. M.O. 4 box was opened with the Key produced by this petitioner. M. 0.6 (forms). M. Os. 7, 8, 9 & 10 (Government seals) M.O. 11 (rubber stamp for the Headquarters Deputy Tahsildar. Arkonam), M, 0.12

(block of the Taluk Officer at Cheyyar) M- O. 13. (fas-cimile of Mr. Srinivasan) and M- O. 16 (another rubber stamp of the -Taluk Office, Wallajan) were found in the box-M. 0.15 series (cash of Rs. 5619) also were in it.

These items were seized under the search list Ex. P. 23. The petitioner was charged along with one Subramaniam (accused No, 1) for offences Under Sections 466, 468, 471, 420 and 474 read with Section 109 IPC The Assistant Sessions Judge, Vellore, convicted them Under Sections 466, 468, 471, 420, 473 and 474 IPC and sentenced them each to undergo rigorous imprisonment for three years with a fine of Rs.' 300 on each count (the sentences to run concurrently). On appeal, the learned Sessions Judge at Vellore, confirmed the conviction and sentence imposed on the first accused Under Sections 466. 468, 473 and 474 IPC The conviction and sentence on both the accused for offences Under Sections 471 and 420 IPC were set aside- The conviction of the second. accused Under Section 474 read with Section 109 IPC together with the sentences imposed on him, were confirmed by him. The petitioner in this revision canvasses the correctness of this conviction.

2. The courts below have found that the permit Ex, P. 1 is a spurious one. The further' finding is that the first accused had forged the signature of the District Supply Officer in Ex. P. 1. With this finding, the first accused has been convicted for offences under Sees- 466 and 468 IPC The petitioner, viz, the second accused, stands acquitted of these charges, because his handwriting was not found in any part of the permit Ex. P. 1. The further finding is that the counterfeit forms and seals were made only by the first accused and as such he has been 'convicted for offences Under Sections 473 and 474 I, P.C. The learned Sessions Judge has acquitted the petitioner for the offence Under Section 473 read with Section 109, IPC observing that there is no evidence connected him either with the making of the forged document Ex. P, 1, or with the making of the forged forms (M.O. 6 series) and the various rubber stamp seals. But he has confirmed the conviction Under Section 474 I. P- C. because M.O. 2 series, and M-Os. 6 to 14 and 16 were recovered from the box M.O. 4. which was opened with the key produced by him.

3. Section 474, I- P.C. punishes possession of any document, knowing the same to be forged and with the intention that the same shall fraudulently or dishonestly be used as genuine. Possession implies control and to be criminal it must be exclusive- Admittedly the house belongs to the father of this petitioner. The father was present at the, time of the search. A copy of the search list has been served only on him, M.O. 4 box was found in his house and this box contained documents - relating to . the father. Two house tax receipts in his name were found in this box. Receipt for the payment of sales: tax in the name of the petitioner's father was also in it. So also the sales-tax assessment order. The property tax demand notice issued to the father of the petitioner was also there. Besides those documents, the seals and forms were found in it. Thus we see that documents relating to the petitioner's father were found in this box. This indicates that the ownership of the box was with the father. The only piece of evidence against the petitioner is that the tiger lock in this box was opened with the key produced by him. D. W. 1 has sworn that this key was produced by the father.

The evidence does not establish beyond doubt that the petitioner was in exclusive possession of the counterfeit seals etc.. with the necessary knowledge The onus of proving such knowledge and exclusive possession is on the prosecution, and apart from the evidence that the key was produced by the petitioner, there is no other evidence or circumstance to indicate that the petitioner possessed the counterfeit seals etc., with the required knowledge. The circumstance that the box contained several papers exclusively relating to the petitioner's father, establishes the ownership of the box with the latter and not with the petitioner. Possession connotes something more than mere knowledge of the presence of the articles in it- The petitioner has been acquitted of the major charges like forgery etc. His conviction is qnly for offence Under Section 474 IPC viz, possession of the counterfeit seals. Exclusive possession of these seals with the necessary knowledge has not been established by the prosecution. Both the conviction and sentence are set aside. The petitioner is acquitted.

4. The revision is allowed.