

Shib Das Kumar Vs. Emperor

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Court : Kolkata

Decided On : Feb-28-1945

Reported in : 1949CriLJ777

Judge : Roxburgh and ; Ormond, JJ.

Appellant : Shib Das Kumar

Respondent : Emperor

Judgement :

Roxburgh, J.

1. In this case the petitioner has been convicted under Section 3 of Ordinance 33 of 1943 for possession of certain coil of wire found in a godown at 38 Maharshi Devendra Road, Jorabagan. Another man Gouri Sankar Kulwar was tried along with the present accused in connection with some wire found with him in a taxi at Tolly gunge. On information he was stopped by the police, he took them to the godown at Jorabagan and pointed out the present petitioner who happened to go there at the time. The key of the godown was found with the-present petitioner, who threw it away. Gouri Sankar Kulwar has been acquitted on the ground that Major Hindley (p. W. i) who was called to prove that the articles in question were military stores was not as emphatic in regard to the wire found in the taxi as he was with regard to the coil found in the godown. As regards that, he is very definite that this wire is not supplied to the civilians, that it never came to India before the

war, that it is supplied by America to India under lease-lend and is made by the United States Government for the British Army. In our opinion, it has been clearly established here that the coil in question consists of military stores that are Cr have been the property of His Majesty, The accused gives no explanation of his possession of the coil; and his defence is to deny possession.

2. Mr. Basu has alleged that there has been a misjoinder in the trial of the petitioner Shib Das Kumar with Gouri Sankar Kulwar. Evidence was called to show that the taxi in question had Originally started from the godown in Jorabagan; the prosecution case was that all the wire had come from that godown and the petitioner was responsible for possession of all the wire. On that basis there was no misjoinder although in fact the accused Gouri Sankar Kulwar has been acquitted. The result is that this rule is discharged.

3. The accused-petitioner must surrender to his bail and serve out the remainder of his sentence.

Ormond, J.

4. I agree, I would only add this on one point on which there appears room for misapprehension: on the question of evidence and the amount of proof. While it is clear under the Ordinance that if the stores are not shown to be military stores , and the accused chooses to give no explanation and no evidence, there will be no reason or room for drawing any presumption against him of unlawful possession. Yet in my view it is equally clear if the accused does choose to furnish evidence, then the evidence given will be available in respect of proof of the whole case, I do not subscribe to any doctrine that the evidence given by the accused as justification for his possession can be put in a water, tight compartment and looked at only for the purpose of seeing whether his possession is law. ful or not. If it is relevant and bears on the question also as to whether the stores handled were military stores , then in my view it can be taken into consideration on that point also.

5. Furthermore it may be possible in some .cases for the prosecution to establish that stores are military stores from the general character of Buck stores , without

any proof of the identity or Origin of the particular stores ; as by relying on a mark shown to be used only for military stores or on the peculiarly military character of the articles. (Mere proof of a mark used in common both for military and for non-military stores clearly would not assist in establishing the stores as military stores). Yet, it cannot be correctly said, conversely, that either the absence of any mark or the presence of a mark used in common both for military and non-military stores necessarily precludes any particular stores being shown by the prosecution to be military stores , if requisite proof is furnished of identity or Origin in a particular case. Nor are different lots of stores of the same type precluded from being shown not to be military stores in one case precluded from being shown to be military stores in another case if the matter is taken to the stage further for their identity or Origin.

6. In the present case, it has been shown on the evidence that stores of the particular type of Ex. 1/2 (coils of electric cable) are not supplied to civilian Organisations. They are thus clearly proved to be military stores in view of their nature, without taking the matter to the further stage of proof of identity or Origin.

7. The position was different regarding the other stores of the type Ex. I/I/I (loose wires), in connection with the possession of which the other accused Gouri was charged in this case. As to those stores the witness called for the Crown, Major Hindley, frankly stated that he could not say if stores of the type of Ex. I/I/I were supplied to the public. Those stores were therefore not shown by the evidence to be military stores from their nature. The prosecution had not sought to take the matter to the next stage by tracing the particular identity or Origin of the particular stores as military stores (as, for example, held on charge by any particular unit or as manufactured for the army under any specified contract). The Additional Chief Presidency Magistrate acting on the ground that those stores (of the type of ex. I/I/I for possession of which Gouri was charged) had thus not been established to be military stores , (in addition to the ground that Gouri being only a carrier, might be given the benefit of the doubt) accordingly rightly acquitted Gouri. So that the case as against Gouri and in respect of the other stores of the type of Ex. I/I/I is not before us for disposal in this appeal: but only as against Shib Das Kumar the present appellant and only in respect of the coils of cable of the type of Ex. 1/2,

which have been clearly shown to be military stores.

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