Chand Khan Vs. Emperor

Chand Khan Vs. Emperor

SooperKanoon Citation : sooperkanoon.com/869439

Court : Kolkata

Decided On : Dec-16-1931

Reported in : AIR1932Cal489

Appellant : Chand Khan

Respondent : Emperor

Judgement :

1. There were seven accused tried for en offence under Section 54-A, Calcutta Police Act. The other accused who were dandis of a boat were acquitted. The present applicant has been convicted as being the majhi of the boat and sentenced to six weeks' rigorous imprisonment. The offence related to certain quantities of betelnuts which were found in the boat of the present petitioner on search. Section 54-A provides for penalty of imprisonment or fine in the case of a man who is found in possession of any-thing which there is reason to believe, has been stolen or fraudulently obtained. It is quite clear that the facts must be shown and findings arrived at that there is ' reason to believe.' Once that has been done, then under the latter part of the section the accused may be called upon to account for hie possession. The matter is well set out in the case of Sukha Kalwar v. Emperor [l9l8] l9 Cr.L.J. 933 which was a case somewhat similar to the present one where this Court intervened and set aside the order of conviction and sentence. The learned Magistrate who has found against the petitioner in the present case has set out the facts that a man had been caught leaving the Juggernath Ghat Jetty with a bag of betelnuts and that on his statement the

present petitioner's boat was searched, that the accused denied that he was in possession of the nuts, that there were certain witnesses who proved the finding of the betelnuts in the petitioner's boat and that there was no doubt that they were [discovered in that boat. The learned (Magistrate goes on to say that he has failed to give any explanation from where he obtained them and that they must 'reasonably be suspected to be stolen property.' I think that that finding of the learned Magistrate is an expression of opinion as regards reasonable suspicion in this case. But that is not what is wanted. What is wanted is a reasonable belief and it seems to me that there is a 'difference in degree as regards the one expression and the other.

2. Our attention has been invited to the evidence. There is a certain amount of conflicting testimony upon the question. At what stage of the search did the present petitioner come on the scene. It is not possible for us sitting here to say what might have been the learned Magistrate's conclusion had he appreciated the right criterion from which the case was to be decided. We think that this is hardly a case of sufficient importance to require a fresh investigation.

3. We are not satisfied with the conviction and the sentence and we therefore make the rule, absolute and set aside the conviction and sentence passed on the petitioner. The petitioner will be discharged from his bail-bond.