

Matabbar Shekh Vs. Emperor

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Court : Kolkata

Decided On : May-25-1910

Reported in : 7Ind.Cas.257

Judge : Harington and ;Holmwood, JJ.

Appellant : Matabbar Shekh

Respondent : Emperor

Judgement :

1. No one appears to show cause against this rule. We called on the District Magistrate to show cause why the conviction and sentence passed upon the present petitioner should not be set aside on the ground that the facts found do not disclose any criminal offence.

2. What appears to have happened is this-The petitioner was in the employ of the Steam Navigation Company and it was his business to see the ticket of the complainant. The complainant had not got the ticket and, therefore, ' the petitioner took possession of his umbrella as security that he (complainant) might be compelled to pay his fare.

3. Under those circumstances, we do not think that he ought to have been convicted of theft. The case is distinguishable from that cited in the explanation of the Magistrate [Queen-Empress v. Srichurn Chungo 22 C. 1017], because that was where a man was taking possession of the property for himself. In this case,

the utmost that can be said is this that the zeal of the petitioner in discharging his duties to his employer led him to do what possibly he was not entitled to do. There is no suggestion that he intended either to get any wrongful gain to himself by compelling payment of the fare or to cause any wrongful loss to the complainant who was bound to pay his fare.

4. Under these circumstances, we do not think that the conviction ought to be sustained. We accordingly make the rule absolute. The fine, if paid, will be refunded.

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