
(1912) 06 CAL CK 0001
In the Calcutta High Court

Abdul Karim

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision : 07-06-1912

Acts Referred:

Penal Code, 1860 (IPC) — Section 411

Citation : 15 Ind. Cas. 492

Hon'ble Judges : Imam, J;Holmwood, J

Bench : Division Bench

Judgement

1. This was a Rule calling upon the District Magistrate of Howrah to show cause why the conviction and sentence passed on the petitioner should not be set aside on the ground that there is no finding that the cement was stolen property, and also why the Act XXI of 1857 was used in this case when the case appears to fall u/s 411, Indian Penal Code.

2. Now we find that this person has been convicted for being in possession of a certain quantity of cement; and because there was a heap of cement lying on the premises of the East Indian Railway Company at Lilua, and because the petitioner is an electric mistry in the employ of the East Indian Railway Company at Lilua, it was calmly assumed that this cement was stolen from the Railway Company. This we need hardly point out is not a reasonable suspicion. It would have been perfectly easy to call the officer in charge of the cement at Lilua to state that shortly or immediately previous to the finding of this cement in the possession of the accused, a certain quantity of cement belonging to the Company had been missing. Then there might have been reasonable suspicion which would bring the case within the meaning of this Act. The only difference which Section 2 of this Act appears to us to make between an offence under this Act and an offence u/s 411, Indian Penal Code, is that it is not necessary under this Act to offer proof that the stolen property has been in the hands of a third person who actually stole it as is the case udder Section 411. But beyond that, it is impossible to see how there can be a reasonable suspicion unless the owner

comes forward and says that his property has been stolen, for if no cement was ever stolen from the East Indian Railway, there can be no reasonable suspicion that a man carrying cement stole it or received it knowing it to be stolen. On the principle enunciated in the judgment and the explanation of the lower Court, it would appear that if a person in Howrah was found in possession of a certain amount of coal, he might reasonably be suspected of stealing it from the East Indian Railway Company, because there is no doubt a heap of coal on the premises of that Company. There is absolutely no difference between the two cases.

3. The sanction and sentence must be set aside and the accused acquitted and released from his bail.