

(1898) 02 CAL CK 0015
In the Calcutta High Court

Empress

APPELLANT

Vs

Wilkinson and another

RESPONDENT

Date of Decision : 17-02-1898

Acts Referred:

Citation : (1898) 02 CAL CK 0015

Judgement

Hill, J.—Three hundred bags of rice which were landed on the 8th and 9th of June 1897, ex S.S. Palitana, and, lying unclaimed in the Port Commissioners' Dock shed, were, on the 9th November 1897, advertised for sale by public auction by the Traffic Manager on or after the 22nd November 1897, under the provisions of sec. 118 of Act III of 1890 (Port Act). Shortly thereafter, the Traffic Manager requested the Assistant to the Health Officer of the Corporation of Calcutta to inspect the rice and give his opinion as to whether the rice, which appeared to be damaged and in a rotten condition, was fit for sale. The rice was then examined by the Health Officer who condemned it and ordered its destruction. The sale was countermanded, information being given that the rice had been seized as unfit for human consumption. The Superintendent of the Health Department was ordered by the Health Officer, the proper authority in that behalf, to cause the destruction of the rice. The former on the 20th and 22nd November 1897, issued his orders to the accused, who were Inspectors in his Department, and gave them verbal and written instructions to cart away the rice from the Kidderpore Docks and to destroy it at the incinerator at Goragatcha. The accused on the 22nd November proceeded to the Docks, and on presentation of their written authority from their Superintendent obtained possession of the rice from the Superintendent of the Docks. The accused, instead of removing the rice to the incinerator, took some 200 bags of the rice on the same day to the house of the first accused and stored it in the compound of that house. On the evening of the same day, the accused sold 200 bags of rice to a trader for the sum of Rs. 1,000, and received Rs. 450 in part payment. The rice remained in the compound of the first accused during the night of the 22nd under the care of a durwan of the trader. On the following morning the latter came again to the house of the first

accused, paid him Rs. 200, and promising to send the balance of Rs. 350, removed the rice to his godown at Jagarnath Chat, where, on the evening of the 23rd, it was discovered by the police and others. The prosecution having opened their case and called several witnesses, the Court intimated its opinion that even should the prosecution establish fully the above-mentioned facts, they would not show that the accused had committed any offence punishable under the Penal Code, but possibly that the accused had infringed a rule of their department and could be punished departmentally; and that in any event the facts did not disclose the commission of an offence punishable under sec. 409 of the Penal Code. His Lordship also intimated that he had had the advantage of consulting two of his learned colleagues on the point and that they concurred in the view which he had expressed.

2. Knight for the Crown--The case is within sec. 409. The accused were entrusted with property, namely, the condemned rice; and misappropriated the rice in breach of the express orders they received with respect to its disposal.

Hill, J.

3. The rice was not "property" within the meaning of the section.

4. Knight.--Property is not defined in the Code. We must then fall back on the definitions to be found in the dictionaries. In its widest sense it means "a thing owned" see Webster; a thing that is susceptible of ownership, not necessarily a thing in respect of which an owner may be assigned at any given moment. More specially; property is that to which a person has a legal title or right to possession. It is not necessary that it should be the property of Government. It is sufficient if it be entrusted to the accused in his capacity of a public servant. (See Fakaruddin Mahomed Ahsan v. N.D. Pogose 2 C. L. R. 575). Extend the analogy of the reasoning in that case, and it appears to be sufficient to sustain a conviction that the property in the subject of the misappropriation was not in the accused. If any question as to value be raised, the accused have themselves resolved it, if our evidence be believed, by selling the rice for Rs. 1,000

Hill, J.

5. In whom do you say the property was at the time of the commission of the offence ?

6. Knight,--It is not necessary to precisely specify the person in whom the right of property was. The section does not so require. It is sufficient as against the accused that it was the property of some one. In this case, however, the property in the rice was in the Corporation. Upon the rice remaining unclaimed, the property in it vested in the Port Commissioners, who were authorized to bring it to sale. See sec, 118, Act III of 1890. By the action of the Port Commissioners in surrendering the rice to the Health Department and of the latter seizing the rice under the provisions of Act II of 1888, secs. 365 and 366, the property in the rice vested in the Corporation. The latter had, if not a full right of property in the

rice, at any rate a special right of property incidental to the exercise of the powers of destruction vested in it.

Hill, J.

7. If your proposition be correct, any Municipal mehter, to take an extreme illustration, who picked up in the roadway and appropriated to himself a castaway hat, might be guilty of an offence under sec. 409, and liable to transportation for life. The section can hardly have been intended to refer to cases of this kind.

8. Knight.--That is not the present case.

Hill, J.

9. No, but the property lay unclaimed. It has been held that where a sacred bull has been set at large and relinquished by its owner, it is not the subject of "property.

10. Knight.--Here, though the rice was originally unclaimed, the Port Commissioners had a right of property in the first instance, for they were empowered to sell; subsequently the Corporation had such a right, for they were empowered to destroy. If they had not at least a special right of property in the rice, the act of destruction would have been illegal and one for which civilly the Corporation would have been liable in damages. Suppose the rice had been taken out of the possession of the Corporation by a stranger. Could it not have maintained trover in respect of it ?

11. At the close of the argument Swinhoe for the 2nd accused stated to the Court, that it had been his intention to raise this point at the close of the case for the Crown.

Hill, J.

12. Yes, I supposed you would take it.

13. The Court then intimating that the facts opened by the prosecution would, if proved, disclose no offence under sec. 409 of the Penal Code, the Down offered no further evidence. The Court then shortly addressed the jury directing them that the facts opened by the Crown even if proved, disclosed no offence. Under this direction the jury returned a verdict of "not guilty" in favour of both Defendants.