

(1954) 12 MAD CK 0002

In the Madras High Court

Case No : Criminal R.C. No. 815 of 1954 and Criminal R.P. No 770 of 1954

In Re: K. Mohamed Rahamathulla

Date of Decision : 01-12-1954

Acts Referred:

Madras City Police Act, 1888 — Section 65

Citation : (1954) 12 MAD CK 0002

Hon'ble Judges : Somasundaram, J

Bench : Single Bench

Advocate : K. Desikachari, for the Appellant;

Judgement

Samasundaram, J.—This is a revision by the petitioner against his conviction under S. 65 of the Madras City Police Act. The Sub Inspector

who gave evidence in this case states in his evidence that he arrested the petitioner on 11th August 1953 in the course of an investigation in

Crime No. 691 of 1953, J. 2 Police station. He searched his shroff shop and recovered M. Os. 1 to 10. Subsequently he searched his house and

recovered M. Os. 11 to 14. M. Os. 11 to 14 have been returned to him on the ground that he is likely to be owner of these articles. With regard

to M. Os. 1 to 10 he had been charged before the lower Court under S. 65 of the City Police Act as he could not give satisfactory account for the

possession of these articles. S. 65 is as follows:

Whoever is found in possession or is proved to have been in possession of anything which there is reason to believe to be stolen property or

property fraudulently obtained and for the possession of which he fails satisfactorily to account shall be liable.

For conviction under this section a person must be found to be in possession or proved to have been in possession of any article and there must be

reason to believe that that property is stolen property or property fraudulently obtained. There is no dispute in this case that the petitioner was found in possession of M. Os. 1 to 10. The question is whether on the materials placed before the Court there is reason to believe that these properties are stolen properties. The circumstances relied on by the prosecution to prove the necessary ingredients of this offence are (1) certain other properties concerned in some other crime were found along with these articles, (2) these articles do not find a place in the accounts maintained by the petitioner. The petitioner examined D.W. 1 to show that these were given to him by D.W. 1 in the course of his business. The evidence of D.W. 1 has been disbelieved. As regards the finding of the other articles concerned in some other case along with these M. Os. there is no evidence as to what happened to those articles. Whether those articles were the subject of theft in the other case and whether they were proved to have been stolen properties, there is no evidence, in these circumstances, we are only left with this one circumstance, viz., that M. Os. 1 to 10 were found in his possession without their being entered in the account of the petitioner. The question is whether this is sufficient to prove that there is reason to believe that these were stolen properties. It might raise a strong suspicion but the mere failure to note them in the account book cannot prove that there is reason to believe that they were stolen properties. Such proof could well have been adduced by evidence being let in that this petitioner was found in possession of other articles which are said to have been stolen. In respect of that matter either the accused in that case or the person from whom the other properties were stolen could have been examined. If evidence of this type had been let in and if the petitioner was in possession of those stolen properties and these M. Os. 1 to 10 were found along with those stolen properties and if there was no entry for the receipt of these M. Os. in the account, certainly foundation would have been laid for a charge that there is reason to believe that they were stolen properties. But no such evidence has been let in. The petitioner's failure to enter the M. Os. 1 to 10 in the account beyond raising a strong suspicion would not be sufficient to hold that there is reason to believe that M. Os. 1 to 10 were stolen property. It is only when the prosecution has established the case that there is reason to believe that the M. Os. are stolen property then the petitioner has got to account

satisfactorily. Since the prosecution has not established that there is no need for the petitioner to explain his possession. In the circumstances, the

conviction and sentence under S. 65 of the City Police Act are set aside. The fine if paid will be refunded.

2. As regards the question whether the M. Os. should be returned to the petitioner himself, that has to be gone into by the lower Court. I direct the

property, if it is sent here, to be sent back to the lower Court for the purpose of disposing it to the person entitled to the same. The lower Court

will take evidence of the person who has been convicted or concerned in the crime for the theft of the property and also Nagaraja Rao who has

been cited in the charge-sheet as a witness. If on their evidence it is clearly made out that the properties belonged to them, the petitioner will not be

entitled to the property.