

(1976) 09 MAD CK 0002

In the Madras High Court

Case No : Criminal R.C. No. 637 of 1974/Crl. R.P. No. 614 of 1974

In Re: Mani

Date of Decision : 10-09-1976

Acts Referred:

Madras City Police Act, 1888 — Section 65

Citation : (1979) LW(Cri) 37

Hon'ble Judges : Ratnavel Pandian, J

Bench : Single Bench

Advocate : B. Sriramulu, for the Appellant;

Final Decision : Allowed

Judgement

Ratnavel Pandian, J.—This revision petition is preferred by the accused in C.C. 912 of 1973 on the file of the Sub Magistrate, Uthangarai,

challenging the propriety of the judgment passed by the learned District Magistrate (Judicial), Krishnagiri in C.A.5 of 1974 confirming the

conviction passed against the petitioner by the trial Court for an offence under S.65 of the Madras City Police Act.

2. The crux of the indictment of the prosecution case is that on 14th February 1973 at 22.15 hours (10-15 p.m.) at Arumuga Achari Street, near

the bus stand at Dharmapuri, the petitioner was found in possession of currency notes in various denominations to the value of Rs. 6,550-00

(marked as M.Os. 2 to 72) and a coin of 50 paise (marked as M.O.73, all wrapped in a kerchief M.O.1 and that there were reasons to believe

that the petitioner had either stolen that amount or had obtained it fraudulently and when questioned, he failed to give a satisfactory account for

possession of the same. Five witnesses were examined on the side of the prosecution, of whom P.W.2, the Sub Inspector of Police, Dharmapuri,

has spoken about his arresting the petitioner on suspicion at 10-15 p.m. that day and to his seizing M.O. 1 to 73 under Ex.P.-1, the mahazar,

attested by P.W.1. P.Ws.3 and 4, moneylenders at Salem, have stated that no cash had been stolen from their houses. P.W.5, the maternal uncle

of the petitioner, has not supported the prosecution case, and therefore, he was treated as hostile. The petitioner came with a case that he was

having Rs. 8,630/- with him, that he brought the money as directed by his uncle P.W.5, for purchasing lands at Dharmapuri and that he was

arrested by the Sub Inspector of Police, P.W. 2. He examined the wife of P.W.5, as D.W.1, who has spoken to the fact that she sent Rs. 8,630/-

through the petitioner for handing over the same to her husband P.W.5 and the petitioner left the village accompanied by two other boys, viz.,

Subramaniam and Mohan. In order to prove his status in life, he further examined P.W.2, the Karnam of Karungalpatti village to which P.W.1

belongs, and this witness has spoken to the fact that P.W.5 has five or six tiled houses and some vacant sites. The trial Magistrate, holding that

obviously the amount should have been stolen from someone", has found the petitioner guilty under S.65 of the Madras City Police Act, convicted

him thereunder and placed him in the custody of his uncle Govindaswami (P.W.5) on his executing a bond for Rs.500/- to be responsible for the

good behaviour of the petitioner for a period of six months. The lower Appellate Court has confirmed the finding of the trial Magistrate and the

conviction. Hence this petition.

3. Mr. Sriramulu, appearing for the petitioner, would mainly contend that the prosecution has not proved the essential and necessary ingredients to

make out an offence under S.65 of the City Police Act and as such the judgment of the lower Appellate Court suffers from a material illegality and

is vitiated.

4. The accused has not denied the case of the prosecution that he was arrested with large amount of cash at the time and place (as stated by the

prosecution) by P.W.2. But, he would say that the sum recovered from him was Rs. 8,630/- and not Rs. 6,550-50. In furtherance of his

statement, the accused would state that he is residing with his uncle P.W.5 and they had been to Dharmarpuri for purchasing certain landed

properties, for which a sum of Rs. 8,000/- was required for drawing up an

agreement and so he was sent by P.W.5, to Salem to fetch the amount.

He accordingly went to Salem and returned to Dharmapuri with the cash, accompanied by two of his friends, viz., one Mohan and Subramaniam.

P.W.5 was not available at the bus stand. P.W. 2 arrested that accused and took him to Dharmapuri police station with his friends. P.W.5 came to

the station by 11 p.m. and told P.W.2 that the money belonged to him. But, P.W.2 replied that P.W.5 could get that amount from the Court.

5. It is well established that before a person can be convicted under S.65 of the City Police Act, the prosecution must adduce, besides the

evidence about possession, evidence from which one can reasonably believe that the property has been stolen or fraudulently obtained, and

thereafter, the Court can be required to take into consideration the omission or failure of the accused to account satisfactorily for his possession of

the property: vide Public Prosecutor v. Subramaniam 1964 M.L.J. CrL. 639. This position is fortified by various decisions of this Court, for

example in Ayyavu Chetty, In re 1965 M.L.J. CrL. 619, Sheik Abubakker, In re 1968 L.W. CrL. 182, Kanni Ammal, In re 1969 L.W. CrL. 245.

S.65 of the Madras City Police Act read 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 punishment.

On a plain reading of this Section, it is apparent that there are three ingredients which must be satisfied in order to attract the applicability of the

said section and bring home the guilt of the accused. They are: (1) The accused is found in possession or is proved to have been in possession of

anything; (2) there must be reason to believe that the thing was stolen property or property fraudulently obtained; and (3) the accused must be

unable to account satisfactorily for his possession of the thing concerned. If these three ingredients are well established, then the accused would be

liable to be convicted for the offence under this Section. It cannot be disputed that in proceedings for imposing penalty under this section, the first

two requisite conditions mentioned above should be satisfactorily proved by the prosecution by letting in unimpeachable and acceptable evidence

to the satisfaction of the Court, and then only the burden of satisfactorily

accounting for such possession will fall on the accused.

6. Now, we shall discuss the evidence in the light of the above legal position. Admittedly in this case there is absolutely no evidence to show that

the currency notes in question are stamped with the character of stolen property. Similarly, there is no satisfactory reason to hold that the

petitioner-accused could have come into possession of the property fraudulently. Both the Courts have taken certain circumstances to hold that the

property should have been obtained by the petitioner-accused by theft and the petitioner has not satisfactorily explained as to how he came into

possession of the huge sum of money. It is surprising that the trial Court has gone to the extent of holding that ""obviously the amount should have

been stolen from someone"". The prosecution has examined P.Ws.3 and 4 to show that there was no theft in their respective houses. Thus, in my

view, the evidence let in by the prosecution itself has eliminated the case that the property should have been stolen property. We have to see

whether there are clinching circumstances to hold that the accused should have fraudulently obtained the property. The first circumstance is that the

accused is a juvenile aged about 15 years. The other two boys who accompanied him, viz., Mohan and Subramaniam are aged about 18 and 16

years respectively. The second circumstance is that the accused was found with the huge amount in the bus stand during night hours. Therefore, the

question is whether we can safely conclude that the accused should have obtained the money fraudulently. P.W.5, examined on the side of the

prosecution, has given a go-bye to the entire prosecution case and has stated that he sent his boy to his house to fetch the amount from his house

to pay the advance to the Panchayat Board President Srinivasan with whom he entered into an agreement for the purchase of four acres of land.

Of course, this witness has been treated hostile by the prosecution. D.W.1 is the wife of P.W.5 and she has stated that she sent the boy from her

house in the evening on the date in question with the sum of Rs. 8,630/- and sent the other two boys with him. D.W.2, is the Karnam of the village.

He has given evidence that P.W.5 has got five or six tiled houses and has let all those houses on rent. When the evidence of P.W.5 and D.W.1 are

read together, it is clear to my mind that it cannot be said that the accused has obtained the money fraudulently. The learned Public Prosecutor has

also fairly conceded that the evidence adduced on the side of the prosecution is not sufficient to show that there are reasons to believe that the currency notes found in possession of the accused are either stolen or fraudulently obtained by him. On the other hand, the defence has satisfactorily accounted for the possession by the accused of the amount. It is well-established that in cases of this nature, when the burden shifts to the accused, it is sufficient if the accused person succeeds in proving a preponderance of probability in favour of his defence and the degree and character of proof which the accused person is expected to furnish in support of his plea cannot and should not be equated with those expected from the prosecution. Therefore, as the prosecution has completely failed to establish its case, but on the other hand the accused has accounted for the possession of the currency notes with him, I hold that both the Courts below have misdirected themselves by holding that the prosecution has proved its case-the trial Court observing that the amount should have been stolen from somebody and the Appellate Court confirming it.

7. For the reasons stated above, this revision petition is allowed and the conviction of the accused and the consequential order passed by the Courts below are set aside. The amount of Rs. 6,550-50 i.e. M.Os. 2 to 73 and the Kerchief M.O.1 shall be returned to the petitioner-accused under receipt attested by P.W.5 and D.W.1.