

(1968) 04 MAD CK 0031

In the Madras High Court

In Re: Sheik Abubaker and Another

Date of Decision : 16-04-1968

Acts Referred:

Madras City Police Act, 1888 — Section 63, 65

Citation : (1969) CriLJ 824

Hon'ble Judges : Krishnaswamy Reddy, J

Bench : Single Bench

Judgement

Krishnaswamy Reddy, J.—The petitioners are accused 1 and 2 in C.C.N. 8125 of 1967 on the file of the Sub-Magistrate No. 1, Tiruchirapalli. They were convicted u/s 65 of the Madras City Police Act and each of them was sentenced to pay a fine of Rs. 50 and further a sum of Rs. 49,750 alleged to have been seized from them was confiscated. On appeal, the learned District Magistrate, Tiruchirapalli, confirmed the conviction and sentence.

2. The short point that arises in this revision petition is whether the conviction u/s 65 of the Madras City Police Act could be sustained on the facts of this case. It is, there, fore, necessary to briefly note the facts of the prosecution case P.W. 3, the Inspector of Police, Tiruchirapalli town, on information, raided the house bearing door No. 24 Bharatbi St, in East Boulevard Road, Tiruchirapalli at about 4-80 p.m. in the presence of P.W. 2 Narayanan and another. P.W. 3 found the petitioners in possession of a trunk box (M.O. 2) containing cash of Rs. 27,000 in currency (M.O. 4) and another plastic bag (M.O. 1) containing cash of Rs. 22,750: in currency (M.O. 3) and some clothe (M.Os. 5 series.) The petitioners produced their account books (M.O. 6 series). As the petitioners did not account for the possession of such a huge amount and as the account books also did not show as to how they happened to have such large amounts with them, P. W. 3 arrested the petitioners and seized the cash under a house search list.

P. W. 3 filed a charge sheet against the petitioners u/s 65 of the Madras City Police Act. P.W. 1, the karnam of Keelakarai stated that the petitioners did not possess any property in Keelakarai and that the second petitioner was in arrears of income-tax to the tune of Rs. 40,000 or Rs. 50,003. The first petitioner

(accused i) claimed the entire money seized by P.W. 3 as his. The second petitioner (accused 2) contended that the case was foisted on him. The petitioners examined one defence witness D W. 1 Mannathambi, a partner of the L.K.S. Jewellery, who stated that he advanced a loan of Rs. 50,000 to the first petitioner under a promissory note on 1.7.1967.

3. The lower courts rejected the evidence of D.W. 1 and found the petitioners guilty u/s 65 of the Madras City Police Act. There are absolutely no materials in this case to show that there is reason to believe that the cash in possession of the petitioners was stolen property or property fraudulently obtained. It is no doubt true that the petitioners were in possession of a huge amount. That circumstance alone will not be enough to believe that it is stolen property or property obtained by fraudulent means. The prosecution, to sustain the conviction u/s 63, must first prove that there is reason to believe, property in possession of a person to be stolen property or property fraudulently obtained, before such a person is called upon to account for such possession. If a person is unable to account for the possession of the property, that circumstance alone cannot be taken for believing that it is stolen property or property obtained by fraudulent means. Section 65 of the Madras City Police Act reads thus:

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 on conviction to fine not exceeding one hundred rupees or to imprisonment not exceeding three months.

This section makes it clear that there must be reason to believe that the property in possession of a person is stolen property or property fraudulently obtained and that the person in possession of such property fails to account for such possession satisfactorily. This section will not cover a case where there is no reason to believe that the property is either stolen property or property fraudulently obtained. Even if there is reason to believe that the property might have been obtained by illegal or unlawful means, unless it is shown that there is reason to believe that either it is stolen or fraudulently obtained, the conviction u/s 65 of the City Police Act cannot be sustained. For instance, if a prostitute is in possession of large sums of money and she is not able to account for such possession for some reason or other, it cannot be said that that amount can be believed to be either stolen property or property obtained by fraudulent means.

It is possible that she should have obtained the money by illegal means, namely, by offering her body for hire. In such a case, inability to account for the possession of the property satisfactorily, cannot lead to an inference for the belief that the property is either stolen or obtained fraudulently. It is, therefore, possible even in this case, that the petitioners would have obtained the money by some improper dealings and that they have not accounted for it, with a view to avoid payment of tax. Mere possession of property, for which a person is unable to account for, will not be sufficient to sustain a conviction u/s 65 of the

Madras City Police Act unless it is also established that there is reason to believe that such property was stolen property or property obtained by fraudulent means.

4. In *Yanchalinga Devan, in re*, 1962 MLJ 501, Srinivasan J. held that Section 65 of the Madras City Police Act requires clearly that; there should be reason to believe the property to be either stolen or to have been fraudulently obtained before the person in possession can be called upon to account for his possession.

5. In *Public Prosecutor v. Subramania* 1964 MLJ 689 Ramakrishnan J. held that before a person can be convicted u/s 65 of the City Police Act, the prosecution must adduce, besides the evidence about possession, evidence from which one can reasonably believe the property to be stolen or property to be 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.

6. Again, Ramakrishnan J. in *Ayyavoo Chetti in re*, 1965 MLJ 619, following his earlier decision held that Section 65 of the city Police Act is not intended to deal with offences of hoarding and profiteering in essential commodities and that it only deals with the offence of possessing stolen property or property fraudulently obtained.

7. With respect, I agree with the principle laid down in the above decisions. As I have already found, there are no materials to hold that the currently notes in the possession of the petitioners could be believed to be stolen property or property obtained by fraudulent means.

8. The obviations and sentence are set aside and the petitioners are acquitted. The revision case is allowed. The fine amounts, if paid, will be refunded to them. The sum of Rs. 49,750 confiscated by the Magistrate is directed to be returned forthwith to the first petitioner (accused 1) since the second petitioner (accused 2) has admitted that the amount belonged to the first petitioner (accused 1).