

(1977) 01 MAD CK 0015
In the Madras High Court
In Re: Srinivasan

Date of Decision : 07-01-1977

Acts Referred:

Madras City Police Act, 1888 — Section 65
Penal Code, 1860 (IPC) — Section 25

Citation : (1977) CriLJ 2040

Hon'ble Judges : Ratnavel Pandian, J

Bench : Single Bench

Judgement

Ratnavel Pandian, J.—The petitioner, the accused in C. C. 21 of 1974 on the file of the Special Judicial Second Class Magistrate,

Tiruchirapalli, has preferred this revision petition challenging the propriety and legality of the judgment passed by the learned Chief Judicial

Magistrate, Tiruchirapalli in C. A. 104 of 1974 on his file, confirming the conviction u/s 65 of the Madras City Police Act and the sentence to pay

a fine of Rs. 50/-, in default to suffer simple imprisonment for one week, passed by the trial Magistrate.

2. The crux of the indictment as per the prosecution case is that the petitioner on 18-4-1974 at 9 a. m. was found to have been in possession of 19

brass plates weighing 57 kilograms, all worth Rupees 1,500/-, suspected to have been stolen or fraudulently obtained and for possession of which

he had failed to satisfactorily account. The prosecution examined two witnesses besides marking Ex. P-1, mahazar dated 18-4-1974, and the

material objects M. Os. 1 to 3. P. W. 1, the Inspector of Police, Tiruverumbur, has deposed that the petitioner, on being inquired, produced one

gunny bag (M. O. 3) containing one square-sized brass plate (M. O. 1) and 18 round-sized brass plates (M. O. 2 series), all weighing 57

kilograms. According to him, the petitioner, when inquired, stated that these

plates were entrusted to him for safe custody by one Dharman, son of Chinnaswami Nadar, and one Murugesan. As P. W. 1 suspected that these properties should have been stolen properties, he seized the material

objects under Ex. P-I, attested by P. W. 2 and another, and arrested the petitioner and after completing the investigation, laid the charge-sheet. P.

W. 2 is examined to corroborate the evidence of P. W. 1 as regards the recovery of the properties from the petitioner.

3. The petitioner-accused, when questioned on the circumstances appearing in the evidence against him, has admitted the fact of his having been in

possession of the properties M. Os. 1 to 3 and having produced the same to P. W. 1 in the presence of P. W. 2. But, he has pleaded that these

properties are his own acquired by him in the normal course of his business as a hawker in old aluminium and brass vessels. He has denied that the

properties are stolen properties. He examined a witness on his side, who has spoken of his having known the petitioner for the past six years as a

respectable hawker in old aluminium and brass vessels, with no infamous activities whatsoever. Relying on the evidence placed by the prosecution,

the learned Magistrate has come to the conclusion that the petitioner is proved to have been in possession of the properties suspected to have been

stolen or fraudulently obtained, for the possession of which he failed to satisfactorily account and thus the prosecution has conclusively and

affirmatively proved its case and brought home the guilt of the accused. Consequently, the trial Magistrate convicted the petitioner u/s 65 of the

Madras City Police Act and sentenced him as stated supra. On appeal, the lower appellate court has confirmed the conviction and sentence.

Hence this petition.

4. Mr. T. S. Arunachalam, appearing for the petitioner, would vehemently urge that both the Courts have completely failed to appreciate the

evidence in its proper perspective and that the ingredients of Section 65 are not satisfactorily proved in the instant case. According to the learned

Counsel, the ingredients of the said section will not be attracted unless it is established that there was reason to believe that the properties seized

were either stolen or fraudulently obtained and the inability on the part of the possessor to account for his possession cannot alone be taken as a

circumstance for believing that the property was either stolen or fraudulently

obtained. Finally, he would submit that in the light of the admissions made by the prosecution witnesses about the status and profession of the petitioner, there is no question of any adverse inference being drawn against the petitioner, especially when the prosecution has not chosen to examine Dharman and Murugesan from whom, according to the prosecution, the petitioner admitted to have received the properties for safe custody.

5. Before entering into a detailed discussion of the oral and documentary evidence let in by both sides, I shall now advert to the position of law u/s

65 of the Madras City Police Act. The said section 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.

A plain reading of the above section would show that there are three necessary ingredients to attract the applicability of the said section for bringing

home the guilt of the accused. They are : (1) the accused must be found in possession or proved to have been in possession of any article ; (2)

there must be reason to believe that the said article either to be stolen property or property fraudulently obtained, and (3) the possessor should fail

to satisfactorily account for possession of the same. If these three ingredients are well established, then the accused would be liable to be convicted

of an offence under this section. The first ingredient is comprehensive enough not only to include persons who are found to be in actual and

corporeal possession of the goods in praesenti but also persons who are proved to have been in possession of the said goods. The second

ingredient is an essential one, on proof of which alone the prosecution can be said to have discharged its burden of proving that the accused has

committed the offence punishable u/s 65 of the Act, Only after the prosecution has proved the first two ingredients, the accused should be required

to satisfactorily account for his possession of the said article or property. In other words, only if the first two conditions have been fulfilled by the

prosecution by letting in convincing, cogent and unimpeachable evidence to the satisfaction of the Court, the third ingredient will come into the

picture. Once the prosecution has satisfactorily proved the first two ingredients, then, unless the accused satisfactorily accounts for such

possession, the Court can safely conclude that he is guilty of an offence punishable u/s 65. Thus, it is seen that the burden of satisfactorily

accounting for such possession, which the third ingredient places on the accused, will have to be discharged by him after the prosecution has

proved that the accused was found in possession or proved to have been in possession of the goods which are reasonably believed to have been

stolen or fraudulently obtained. The term "stolen property" is not defined in this Act. According to Section 410 of the I. P. C., the term "stolen

property" will include property, the possession whereof has been transferred either by theft or by extortion or by robbery and property which has

been criminally misappropriated or in respect of which criminal breach of trust has been committed. The expression "stolen property" or "property

fraudulently obtained" merely denotes the attribute, stamp or character of property found or proved to have been in possession of the accused

concerned. If the said property is capable of being characterised as stolen property or property fraudulently obtained, by whomsoever it might

have been stolen or fraudulently obtained, that would be sufficient compliance with the first two ingredients which the prosecution is called upon to

prove before the accused is required to satisfactorily account for such possession. If we look at the plain language of this section, it is clear that it

stops there at describing the property as stolen property or property fraudulently obtained and does not go beyond to add the words "by him". If

the intent of the legislature were that the property should be stolen or fraudulently obtained by the accused, then nothing would have been easier for

the legislature than to use appropriate words such as "stolen property or property fraudulently obtained by him." In fact, that could not have been

the intention of the legislature, because if the property were stolen or fraudulently obtained by the accused, that would be a distinct or independent

offence under the I. P. C. or under the Customs Act or under any other Act and it would not be necessary to make it over again an offence under

the City Police Act. The section merely speaks of the character of the property -- whether it satisfies the particular description, and does not say by

whom it should have been stolen or fraudulently obtained. The theft or fraudulent obtaining of the property may be by any person. It is not the

actual act of stealing or fraudulent obtaining that is sought to be hit by the section. Here it is the possession of the said goods by the accused, which goods bear the attribute or characteristic of stolen property or property fraudulently obtained, that is made penal. Therefore, the only enquiry which the Court is called upon" to make is whether on the material on record there is reason to believe that the property found in possession of the accused can be described as stolen property or property fraudulently obtained, whoever may be the person who committed the theft or fraudulently obtained the same vide Champaklal Ganeshmal Vs. The State of Maharashtra, .

6. Next comes the question as to the meaning of the word ""fraudulently"". Section 25 of the I. P. C. says that a person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise. In other words, it means that there must have been deception, actual or intended, and injury or risk of injury, though not to any particular person. Therefore, if a person obtains a property with intent to defraud another, he is said to have obtained the property fraudulently.

7. It next becomes necessary to consider the important question as to what is the reason on which one has to base his belief that the property is either stolen or fraudulently obtained. Section 26, I. P. C. says that a person is said to have ""reason to believe"" a thing if he has sufficient cause to believe that thing but not otherwise. The word ""believe"" is a very much stronger word than ""suspect"" and it involves the necessity of showing that the circumstances were such that a reasonable man must have felt convinced in his mind that the property with which he was dealing must be stolen property or property fraudulently obtained. This is on the principle that the true legal approach in criminal cases must be that suspicion, however grave, must not be allowed to take the place of legal proof. A person must be held to have reason to believe a property to be stolen or fraudulently obtained within the meaning of Section 65 when the circumstances are such that a reasonable man would be led by a chain of probable reasoning to the conclusion or inference that the property he was dealing with was either stolen or fraudulently obtained, although the circumstances may fall short of carrying absolute conviction to his mind on the point. It admits of no doubt that the requirement of Section 65 of the Madras City Police

Act, which provides that the officer seizing the goods must entertain a reasonable belief that the goods are stolen or obtained fraudulently, is an adequate safeguard to the person affected.

8. There must be reasonable or rational connection between the fact to be proved, viz., that the subject properties are stolen or obtained

fraudulently and the fact from which an inference is permitted to be drawn under the said provision, viz., reasonable belief of the officer effecting

the seizure, that the goods are stolen or fraudulently obtained. The entire evidence in the possession of the seizing officer should be and has to be

placed before the Court, because it is not the belief of this seizing officer that is going to decide the case, but the result followed by the order of the

Court to whose satisfaction the evidence is placed. The reasonable belief of the seizing officer is a pre-requisite for the statutory onus to arise. It is

also true that at the stage of the trial, the reasonableness of the belief of the officer effecting the seizure that the goods are stolen or fraudulently

obtained, would be the subject-matter of enquiry by the court, though the court may not go into the sufficiency of the reasons which led the seizing

officer to effect the seizure. Nevertheless, it is manifest that on the stage of the trial, the very facts which led the seizing officer to effect the seizure

are the subject-matter of enquiry by the court, because the police officer who acts exclusively entertains the belief on an unproved information

communicated by the informant and gathered from sources which most often are not disclosed to the affected party.

9. The import of the words "reason to believe" as used in this section, conveys that there must be some rational basis to form the belief that the

goods are stolen or fraudulently obtained. "Reasonable grounds" necessarily postulate that they must be germane for the formation of the belief

regarding the character and quality of the goods. The ground must be relevant and have a nexus with the formation of the belief. At the same time,

it is necessary to observe that such belief must be held in good faith and should not be a mere pretence.

10. It will be necessary, therefore, before any person could be called upon to prove that the goods seized from him are not stolen or obtained

fraudulently, that the seizing officer making the seizure must have proceeded upon the foundation of a reasonable belief inspired in him by some

definite materials by way of definite information or otherwise, so that he could be said to have seized the goods in the reasonable belief that they

were stolen or obtained fraudulently. The Supreme Court, while expatiating the terra , ""reasonable belief"", has observed in *The Collector of*

Customs, Madras Vs. Nathella Sampathu Chetty and Another,

The reasonableness of the belief has to be judged by all the circumstances appearing at that moment.

11. In *Mamchand and Co. and Others Vs. Commissioner of Income Tax, West Bengal II and Others*, , the Calcutta High Court has observed that

the words ""reasons to believe"" mean that reasons should exist and the seizing officer has to show facts which prima facie will convince the court

that a reasonable man could, under the circumstances, form a belief which will impel him to take action under the law. In *S. Narayanappa and*

Others Vs. Commissioner of Income Tax, Bangalore, , it has been observed that the belief must be held in good faith and it cannot be merely a

pretence. Their Lordships further observed that to put it differently, it is open to the court to examine the question whether the reasons for the belief

have a rational connection or a relevant bearing for the formation of the belief and are not extraneous or irrelevant to the purpose of the section.

12. The House of Lords in the case of *Shearer v. Shields* 1914 AC 808, while construing a provision in the Glasgow Police Act authorising

constables to arrest if they had reasonable grounds of suspicion, held that the burden rested upon the constable to show that his suspicion was

reasonable and his act was therefore justified.

13. To sum up, it is the accepted law that the words ""reasons to believe"" suggest that the belief must be of an honest and reasonable man, based

on reasonable grounds and the action should not be based on irrelevant or extraneous data. Though the expression ""reason to believe"" borders on

subjectiveness, yet the said term has to satisfy the reasonable objective tests as well. The provision is not designed to be used as a handle for the

seizing officer for indiscriminate seizure, nor does it permit capricious acts with a view to make such roving enquiries into the affairs of a dealer's

business in order to fish out materials on the off-chance of getting something to justify his act.

14. Any search or seizure undertaken by an officer should be within the compass

of the prescribed rule of law and it is also imperative that the procedure indicated in the Cr. P. C. regarding search and seizure should be strictly followed, because searching the residential or business premises of a citizen or a businessman indiscriminately and in utter disregard of the rule of law will constitute a serious invasion into one's private rights. Though there cannot be any hard and fast rule to determine the nature and extent of satisfaction that the seizing officer should have had before effecting the seizure or arrest, Courts do recognise certain well-accepted guidelines such as the intrinsic nature, value and quantity of the goods possessed by the individual concerned in contradistinction to his normal and usual avocation and capacity or possession in violation of the laws and regulations concerning their import, storage etc. or the place and manner in which such goods are stored or secreted, as the case may be, etc. etc.

15. There is, indeed, a plethora of authorities on the aspect that the third ingredient, viz., the accused should account satisfactorily for his possession of the goods, would come only after the first two ingredients are satisfactorily proved by the prosecution. In *Mohamed Rahamatulla v. State* 1955 MWN (Cri) 169 it has been held that it is only when the prosecution has established that there is reason to believe that the goods are stolen property, the accused has got to account satisfactorily for his or their possession, and if the prosecution has not established that, there is no need for the accused to explain his possession. In *Vanchalinga Thevar v. State* 1962 MWN (Cri) 17, it was observed that before a person in possession of the goods can be called to account for his possession, the section requires that there should be reason to believe the property to be either stolen or to have been fraudulently obtained. A similar view has been expressed by K. N. Mudaliyar, J., in *Kanniyammal In re* 1969 MLW (Cri) 245. The position has been well-explained by Ramakrishnan, J., in *Public Prosecutor v. Subramaniam* 1964 MLJ (Cri) 639, as follows :--

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.

Krishnaswamy Reddy, J., in *In Re: Sheik Abubaker and Another*, has observed as follows :

The section (Section 65) 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.

As Srinivasan, J., has put it in *Vanchalinga Thevar's Case* 1962 MWN (Cri) 17, Section 65 does not give any uncontrolled power to any police

officer to question any citizen and ask him to account for his possession of any property. I respectfully agree with the views of the learned Judge. I

may also add that when a Police Officer exercises his powers under this section, he should not be left with the impression that his powers are either

unbridled or untrammelled and that he can proceed against anyone even if he entertains a bare suspicion. Similarly, the prosecution should not be

launched under this section indiscriminately and arbitrarily without having sufficient reasons for believing that the goods in possession of the accused

are tainted with the characteristics of a stolen property or property fraudulently obtained.

16. Now, let us ascertain what is the nature of the proof expected from the accused person in satisfactorily accounting for his possession.

17. The last ingredient requires the accused person to satisfactorily account for possession of the goods concerned. Ordinarily, an accused is

entitled to acquittal if he can account for honest possession of property which has been proved to have been either stolen or fraudulently obtained.

The rule of law is that if there is a *prima facie* explanation of the accused that he came by the goods in an honest way, the inference of guilty

knowledge is displaced. This is based upon the well-established principle that if there is a doubt in the mind of the court as to the necessary

ingredient of an offence, that benefit of doubt must go to the accused. But, the legislature has advisedly used the expression ""satisfactorily account"".

The emphasis must be on the word ""satisfactorily"" and the legislature has thus deliberately cast a burden on the accused to offer a plausible

explanation as to how he came by possession of the property and satisfy the court that his explanation was worthy of acceptance. It is not

necessary in all these cases that the accused must examine independent witnesses to prove his case. As has been recently held by the Supreme

Court in *Shri Rabindra Kumar Dey Vs. State of Orissa*, , it is not obligatory on the accused to produce evidence in support of his defence and for

the purpose of proving his version he could rely on the admissions made by the prosecution witnesses or on the documents filed by the

prosecution. As far as the instant case is concerned, Mr. T. S. Arunachalam rightly points out that the prosecution has utterly failed in discharging

the initial burden cast on them on the lines indicated by me supra.

18. He would also rely on the admission of P. W. 1, who has stated that the petitioner is a hawker in old vessels for the past three years, and on

the evidence of P. W. 2, who has stated that to his knowledge the accused was doing business in old aluminium and brass vessels for the past

seven or eight years, and contend that these admissions made by the prosecution witnesses themselves would go to show as to how the accused

had come to possess these properties. Further, the learned Counsel would vehemently urge that the evidence of P. W. 1, cannot command any

acceptance by this Court in as much as the persons, viz., Dharman and Murugesan, have not been examined to corroborate his testimony and

therefore" it follows that what these two persons told P. W. 1 is only hearsay and as such inadmissible. Therefore, it stands to reason that the

prosecution has not discharged its initial burden of proving that there are sufficient materials for holding that the properties are either stolen or

obtained fraudulently. The accused, after having admitted the possession of the properties, has explained it by saying that he purchased all the

properties from various persons on various dates, which explanation, when viewed in the light of the admissions made by P. Ws. 1 and 2, renders

it highly probable that the petitioner could have obtained the same in the normal and usual course of his business.

19. In the result, I hold that the prosecution has not made out the offence u/s 65 of the Madras City Police Act against the petitioner. Therefore,

the conclusion arrived at by the Courts below is erroneous and unjustified, which necessitates interference by this Court.

20. Accordingly, I set aside the conviction and sentence passed against the petitioner by the Courts below and acquit him of the offence with which

he has been convicted. M. Os. 1 to 3 shall be returned to the petitioner and the fine amount, if paid by him, shall also be refunded to him.