

(1951) 02 CAL CK 0038

In the Calcutta High Court

Case No : Criminal Revn. No's. 678 and 679 of 1950

Maharathi Prosad and Another

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 02-02-1951

Acts Referred:

Bengal Criminal Law (Industrial Areas) Amendment Act, 1942 — Section 4

Citation : AIR 1952 Cal 122

Hon'ble Judges : P.N. Mookerjee, J; Das Gupta, J

Bench : Division Bench

Advocate : S.S. Mukherjee and Kishore Mokerji, for the Appellant; Amiya Lal Chatterjee, for the Respondent

Judgement

1. The petitioners were convicted u/s 4 of the Bengal Criminal Law (Industrial Area) Amendment Act of 1942 (Bengal Act IV of 1942) and sentenced to rigorous imprisonment for one month. The prosecution case was that at about 7 O'clock in the morning on the 7th of January, 1948, when Lorry No. B.G.J. 841 was found being driven from Ichapore side it was stopped by the Police near the Barrack-pore railway gate and it was found that the petitioner Maharathi Prosad was driving the lorry while Ful Mahammad and another person, not before us, one Altaf Hossain, were also on the lorry. In the lorry there were 30 bundles of white and brown paper and a number of paper board. The prosecution case was that there is reason to believe that this paper and paperboard were either stolen or fraudulently obtained and these two persons were in possession thereof and have not been able to account for this possession.

2. On behalf of Ful Mahammad it was argued before us that there is nothing to show that he was in possession of the paper and the boards found on the lorry. Ful Mahammad's own story is that he was coming to Haider Brother, Ichapur, Barrackpore for purchasing cloth and just happened to be in the lorry, as the driver had agreed to give him a lift. It appears from the evidence of prosecution witness No. 3 that this statement was made by Ful Mahammad immediately on

being asked when the lorry was stopped. No circumstances have been brought out in the evidence to show that the statement of Full Mahammad given then and there and repeated now was not true or that he had anything to do with the boards and brown paper on the lorry. In our judgment the evidence on record far from showing that Ful Mahammad was in possession of these goods, shows that he was not in possession of any of these goods. His conviction cannot therefore stand.

3. The position is slightly different as regards the driver of the lorry who appears to have driven the lorry with full knowledge that these goods were on his lorry. It should therefore be reasonably said that he was in possession of these goods. The question however which remains for decision is whether he has satisfactorily accounted for such possession. The explanation given by him to account for this possession is that some persons who were in a taxi which was preceding the lorry, had asked him to carry these things in his lorry and asked him to follow the taxi. It is important to note that p.w. 3, the Head Constable who was in the police party which stopped the lorry, admitted that this statement was made by the driver then and there. It is equally worthy of notice that according to his evidence a white taxi had passed by sometime before the arrival of the lorry. He said that he could not mention the time but it is important to notice that he does not say that the taxi had passed by long before the lorry was seen. The circumstances therefore justify in our opinion the conclusion that the explanation given by the accused of his possession is quite a probable one. He should therefore be considered to have discharged the duty that lay on him u/s 4 for accounting for the possession. Reference may be made in this connection to the decision in the case of "Chang Chun Ching v. Emperor" 49 CWN 229 where in connection with a similar provision in Ordinance XXXIII of 1943 it was decided that the proof required of the accused is not of the same standard as required of the prosecution in proving guilty and that lawful possession is proved if he satisfied the Court of a reasonable probability that the articles came into his possession lawfully. In our judgment driver Maharathi Prosad must be held to have satisfactorily accounted for his possession of these goods which were found in the lorry. The order of conviction passed against him cannot therefore stand.

4. We therefore set aside the order of conviction and sentence passed against these petitioners and order that they be acquitted. Let them be discharged from their bail bond. The order of forfeiture will however stand.

5. Both the Rules are made absolute.