
(1964) 04 MAD CK 0061

In the Madras High Court

Case No : Criminal Appeal No. 557 of 1962

Public Prosecutor

APPELLANT

Vs

Subramaniam alias Subbiah

RESPONDENT

Date of Decision : 01-04-1964

Acts Referred:

City Police Act, 1988 — Section 65

Citation : (1964) ILR (Mad) 981

Hon'ble Judges : Ramakrishnan, J

Bench : Single Bench

Advocate : V.V. Radhakrishnan, for N. Krishnaswami Reddi, P.P, for the Appellant; B. Sriramulu, Amicus Curiae, for the Respondent

Judgement

Ramakrishnan, J.—This appeal is filed by the State against the acquittal of the accused in Calendar Case No. 1922 of 1962 by the Third Presidency Magistrate. The evidence given by the prosecution shows that when the room occupied by the accused in Hotel De Kerala was searched by the Police a costly Rolex watch was recovered. Thereupon the accused was prosecuted u/s 65 of the City Police Act which 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 for punishment.

2. The accused alleged that the watch was his own property. He examined the Assistant Jailor of the Central Jail, Salem, whose evidence was that when the accused was released from Jail on 20th January 1962, about a month before the present occurrence, he had with him a wrist watch of a different make from Rolex which was valued at Rs. 40.

3. The learned Magistrate when he acquitted the accused has given reasons some of which are partly valid and some of which are partly not valid. When he

doubts the valuable nature of a Rolex watch the Magistrate is clearly in error, but he is right when he observed that there was no evidence to show how P.W. 2 came to believe the watch to be a stolen one. 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. In the present case the only evidence on the side of the prosecution is the recovery of a costly watch from the possession of the accused, that is from the room which he occupied in a hotel. It is possible that he was living above his means by taking a room in an expensive hotel. But there should have been some evidence about the means of the accused or his social standing from which one can infer that he was a person who would not ordinarily possess a costly watch like the Rolex watch. The prosecution has contended itself in this case with proof of mere possession, But that by itself will not be sufficient to make out an offence u/s 65 of the City Police Act. In fairness to the accused the prosecution cannot also take into account against him the evidence given on behalf of the accused by a defence witness, namely, the Assistant Jailor to the effect that he was released from jail only a month before the occurrence. It is not proper to use this evidence, to supply the lacuna in the prosecution evidence.

4. I, therefore, see no grounds to interfere with the order of acquittal and this appeal is dismissed. I must record the help I received from Mr. Sriramulu Counsel who appeared for the accused as *amicus curiae*.