(1965) 09 PAT CK 0001

In the Patna High Court

Case No : Criminal Revision No. 244 of 1965

Shyam Bahadur Koeri and Others — APPELLANT

Vs

The State — RESPONDENT

Date of Decision : 20-09-1965

Acts Referred:

Penal Code, 1860 (IPC) — Section 107, 82
Treasure Trove Act, 1878 — Section 20, 3, 4

Citation : AIR 1967 Patna 312 : (1967) CriLJ 1360

Hon'ble Judges : Ramratna Singh, J;Anwar Ahmad, J

Bench : Division Bench

Advocate : Tarakant Jha, for the Appellant;

Final Decision : Allowed

Judgement

Ramratna Singh, J.—This application is directed against an order of the Collector of Saran, dated the 9th February, 1966, directing the prosecution of the petitioners under certain provisions of the Indian Treasure Trove Act, 1878 (hereinafter to be referred to as the Act).

2. On the 5th April, 1960, some boys and girls were grazing cattle in a chaur (parti paddy land) and petitioner No. 1, Shyam Bahadur Koeri, aged about 7 years, was one of those boys. He came across some thing looking like gold and he is said to have dug the soil with a stick used for tending cattle and discovered a golden disc or plate. Thereafter, some of the graziers began to play with the disc with their sticks and it was broken. Sheosakal Bhar, an older boy, who was also grazing his cattle nearby, took away the disc from Shyam Bahdur, who went home and reported the matter to his mother, who is petitioner No. 2. She came to the field and took the disc from Sheosakal and got it tested by some goldsmith who reported the same to be made of gold. The Village Choukidar came to know about the same and informed about it to the Sub-Inspector of Guthani Police Station who came to the village on the 7th April, 1963, and recovered 5 broken pieces of the disc weighing 14 tolas and odd from petitioner No. 2. He seized the

same and reported the matter to the Superintendent of Police who ultimately reported it to the Collector. It may be mentioned here that the 5 pieces, which were recovered by the police, could make only one half of the disc, and, therefore, the whole disc would have weighed 28 tolas and odd. The remaining portion of the disc was however, not traced.

3. The Collector examined one of the cowboys namely, Gotiri Shanker, who said that Shyam Bahadur found the disc after duggiug it from the earth. Witness Gulbadani, a girl grazing a cow did not see Shyam Bahadur actually digging out the disc from the ground but she saw it only after Shyam Bahadur had brought it from the chour. The other graziers and one Rajmangal Tiwary, who according to Gouri Shanker, was passing that way and who had seen the broken disc, were not examined. The other witnesses are the chaukidar, a blacksmith, a goldsmith and the Police Sub-Inspector. It appears that the disc weighing more than 28 tolas, must be an old one and it could not have been made in 1960 or thereabout If such a heavy disc were on the surface of the soil and visible to all then it is very probable that some passer by would have got it much earlier and there would have been no occasion for Shyam Bahadur to discover it. It is, therefore, very likely that this disc has been concealed by some body--probably a thief in order to dupe his companions--in the field, but he himself missed the track and ultimately on account of cattle grazing there, some portion of the earth was removed and a portion of the disc became visible and then Shyam Bahadur dug it out with his stick which he had taken for tending his cattle.

4. Mr. Tarakant Jha, who appears for the petitioners submitted that the provisions of the Act do not apply to the disc in question inasmuch as it was not a ''treasure'' as contemplated in Section 3 thereof. According to this section ''treasure'' means "anything of any value hidden in soil, or anything affixed thereto". Section 4 requires the finder of any treasure exceeding in amount or value ten rupees, to give to the Collector a notice in writing of the date of the finding and other details thereof, and either to deposit the treasure in the nearest Government Treasury or give the Collector such security as the Collector thinks fit to produce the treasure at such time and place as he may from time to time require. On receipt of the notice, or, according to the amendment by Bihar Act 22 of 1947, on information from any other source, the Collector shall, u/s 5 make enquiries after publishing a notification, including a special notice to the owner of the place where the treasure was discovered. If the owner of the place fails to appear before the Collector, he shall forfeit his right to the treasure (see Section 6).

Section 7 requires the Collector to determine the person by whom, the place in which and the circumstances under which the treasure was found as also as far as possible the person by whom, and the circumstance under which such treasure was hidden. Section 8 makes provisions for the institution of a civil suit, by a person claiming to be the owner of the treasure to establish his right within a period to be fixed by the Collector; but this provision applies only when the

Collector finds that the treasure was hidden by a person claiming it or by some other person under whom he claims. In other cases, the Collector may declare the treasure to be ownerless u/s 9. When such a declaration is made, the treasure may be delivered either to the finder thereof to be divided between him and the owner of the place in which it has been found; if no one appears as owner of the place, the treasure shall be delivered to the finder, and in case there be only one owner of the place, the treasure will be divided (see Sections 11 and 12). Provisions regarding disputes in respect of ownership of place are made in Sections 18 to 15. Power to acquire the treasure on behalf of the Government on payment of compensation are contained in Section 16. Miscellaneous provisions are made in Sections 17 to 19, while Renal provisions are made in Sections 20 and 21.

5. The law on the subject to India is substantially the same as in England. The English law is summarised by Farwell, J. in the case of Attorney General v. Trustees of the British Museum. (1903) 2 Ch 598 thus:

"Treasure Trove is where any gold or silver in coin, plate or bullion, it found concealed in a house or in the earth, or other private place, the owner thereof being unknown, in which case the treasure belongs to the King or his grantee, having the franchise of treasure trove; but if he that laid it be known or after wards discovered, the owner and not the King is entitled to it; this prerogative right only applying in the absence of an owner to claim the property. If the owner, instead of hiding the treasure, casually lost it, or, purposely parted with it, in such a manner, that it is evident he intended to abandon the property altogether, and did not purpose to resume it on another occasion, as if he threw it on the ground, or other public place, or in the sea, the first finder is entitled to the property, as against every one but the owner, and the King''s prerogative does not in the respect obtain. So that it is the hiding and not the abandonment of the property that entitles the King to it."

In short, the Crown is entitled to the article only when it is hidden, but not when it is abandoned by the owner.

In Halsbury''s Laws of England (third Edition, Vol. 10) in paragraph 1238, it is stated :--

"Treasure Trove is gold or silver, in coin, plate or bullion, whereof no person can now prove the property hidden in ancient time and discovered recently it belongs to the Queen or to some lord or other person by the Queen''s grant or prescription, the prima facie presumtion always being that it belongs to the Queen".

6. In this connection, it would be profitable to refer to a bench decision of the Madras High Court in the case of Manager of Hampi Sri Virupaksha Swami Temple v. Lambani Golya ILR (1908) Mad 397. Their Lordships stated the English Law regarding the property found to have been hidden thus:

"The fact of its being found hidden is taken to show that the owner did not intend to abandon it, and under these circumstances when it is subsequently found hidden and the real owner is not forthcoming the law gives it as bonum vacuum to the Crown".

The right which Government possessed to hidden treasure was mentioned in the proclamation of the Governor General in Council dated 3-10-1877 printed in Colebrook''s Bengal Regulations Vol. 3 page 346; the Government subsequently proceeded to deal with the disposal of hidden treasure by regulations which nave now been reproduced by the Indian Treasure Trove Act of 1878. But, the British Government "never asserted any right to unclaimed property other than hidden treasure and even as so hidden treasure the Act provides for dividing it between the finder and the owner of the soil" from which the property is discovered. Their lordships further said that articles which are not found hidden are governed by the general law of possession and are, therefore, the property of the person in whose land they are found unless they are found in a public place; it makes no difference that the possessor of the land is not aware of the thing in existence. They distinguished the decision in the case of Rani Kattama Nachiar v. Muhammad Mira Ravuthan (1871 7 Mad HCR 150 with the observation that the claim by the Rani to idols found on her land was rejected solely on the ground that the circumstances under which the idols were found showed that they had been hidden and consequently they came within the regulation now superseded by the Act of 1878.

7. Mr. Jha submitted that no action could be taken against the petitioners inasmuch as the disc in question was not a "treasure" as defined in the Act. He also submitted that the decision of the Nagpur High Court in the case of Trivenibai v. Emperor AIR 1946 Nag 362 on which the Collector relied, did not apply to the instant case. But the Collector referred the decision solely for the purpose of ascertaining the significance of the word "hidden" to the effect that a thing can be said to be hidden "when the concealment and ownership of it are not known". The learned single Judge of the Nagpur High Court concluded with reference to the dictionary meanings of the word treasure'' ''finder'' and ''find'', that the words ''hidden'' and ''finder'' used in the Act "must be understood in the sense of discovery by chance" which connotes ignorance on the part of the finder before the discovery. According to the Oxford Dictionary, the word ''find'' means "to come upon by chance or to discover by search" and ''finder'' is one "who comes upon or discover by chance or search". Then his Lordship explained the difference between ''chance and search''; and observed that one would search for a thing only when he knows it to be hidden or concealed in any particular place, where as one would come upon or discover a thing by chance at a place, if he had no previous knowledge of the same. The difference is manifest and there can be no two opinions about the same. But, even without going into these dictionary meaning it is evident from the provisions of the Act that a treasure contemplated therein is an article concealed in the soil but the owner thereof is not known. Now, keeping this in view, let us consider the facts in the instant case.

8. For the reasons stated in paragraph 3 of this judgment, it is evident that the cowboy discovered me disc weighing more than 28 tolas by chance and he did not know anything about the same before its discovery, and there can be no doubt that the disc had been kept concealed in the soil by some unknown person and this boy Shyam Bahadur, discovered it by chance. The disc, therefore, was a treasure as contemplated by the Act.

9. None of the petitioners is, however, liable to be prosecuted. Shyam Bahadur was only about 7 years old at the time and, in the absence of a definite evidence regarding his age, he is protected by Section 82 or the Penal Code, which lays down that nothing is an offence which is done by a child under 7 years of age There is no evidence that his mother, petitioner No. 2 knew that her son had got the disc which had been concealed in the soil. Even if she knew about it, then under Sec. 4 of the Act, it would not be her duty to give notice to the Collector about the find. She cannot also be said to have abetted the commission of any offence by Shyam Bahadur, because there is no evidence to indicate that she asked her son not to give any notice fee the Collector or any other authority. Mere connivance on the part of the mother in the sense that she did not ask her son to report the matter to the authorities does not amount to abetment within the meaning of Section 107 of the Penal Code. So, neither of them can be prosecuted u/s 20 read with Section 4 of the Act.

10. So far as petitioner Ram Chandra Choudhury is concerned, he has been ordered to be prosecuted for abetment u/s 20 of the Act; strictly speaking it should read as Section 21, because Section 20 imposes a penalty on the finder of the article failing to give notice u/s 4 and under Sec.-the owner of the place in which any treasure is found may be prosecuted for abetment for an offence u/s 20. But, against this petitioner also, there is absolutely no evidence of abetment within the meaning of Section 107 of the Penal Code; and, according to Sec. 21, as amended by Bihar Act 22 of 1947, the owner of the place is guilty of abetment only when he fails to report the fact to the Collector within two months of the date of the finding of the article, but the choukidar reported the matter within two days of the date of the finding. Moreover, the evidence on the record is not sufficient to show in whose land the disc in question was hidden and from whose land it was discovered. Witness Gouri Shanker said that the disc was found in a field in village Barapalia, while choukidar Ramjatan Dusadh, who did not no to the field at all, stated that the disc was discovered from the land of petitioner Ram Chandra Choudhary in village Chakari. No police officer either tried to find out the field. As I have stated earlier, the Collector did not examine Shyam Bahadur or Sheosahai, and, therefore, it is not possible to know exactly from whose land the disc was recovered. It may be mentioned here that the choukidar was not an eye witness and it is not clear from whom he learnt that the disc was recovered from the land of Ram Chandra Choudhary. Hence, it cannot be said with certainty that the disc was recovered from the land of Ram Chandra Choudhury,

11. Mr. Jha then challenged the order of the Collector vesting the shares of the finder and the owner of the land in the State. It appears that on the 28th September, 1960, a joint petition was filed before the Collector on behalf of the three petitioners in which they said that they were totally innocent inasmuch as Shyam Bahadur was a small boy aged about 7 years and the other two petitioners were not aware of the find at all when the police arrived at the village. In this petition, it was nowehere stated that the disc was discovered from the land of Ram Chandra Choudhary. But, on the same date another petition was filed on behalf of Shyam Bahadur and Ram Chandra Choudhary that both of them were entitled to get the disc found in the field of Ram Chandra Choudhury and they had settled between themselves to divide the property half and half. This petition is referred to in paragraph 8 of the application in revision, and in ground No. 9 of the application it is said that inasmuch as the disc was not a ''treasure'' within the meaning of the word in the Act, the Collector, had no jurisdiction to order that the article vested in the State; but in ground No. 10, it is stated that the identity of the land where the disc was found, has not been proved. Hence, on the materials, on the record, Ram Chandra Choudhary is not entitled to any share in the treasure so far.

As regards the claim of the finder, Shyam Bahadur, to any part of the treasure, it cannot be allowed at this stage because he has not so far given any explanation as to what happened to the remaining part of the disc which was not seized by the police from his mother. On the materials on the record, therefore, it cannot be said that the order of the Collector vesting the five broken pieces of the disc in the State is wrong. This contention of Mr. Jha, therefore, fails. But, petitioners Nos. 1 and 3 may, if so advised, move the Collector to make further enquiries into the matter provided that they are prepared to furnish sufficient materials for the determination of the ownership of the land and other facts which may entitle them to any share in the five broken pieces of the disc.

12. In the result, the application is allowed and the impugned order of the Collector dated the 9th February, 1965 is set aside in so far as it directs the three petitioners to be prosecuted under different provisions of the Indian Treasure Trove Act.

Anwar Ahmad, J.

13. I agree.

