
(1955) 12 BOM CK 0008
In the Bombay High Court
Case No : Criminal Ref. No. 117 of 1955

State	Vs	APPELLANT
Sundarlal Govardhan		RESPONDENT

Date of Decision : 02-12-1955

Acts Referred:

Bombay Police Act, 1951 — Section 124

Citation : AIR 1956 Bom 88 : (1956) CriLJ 211

Hon'ble Judges : Bavdekar, J

Bench : Single Bench

Advocate : Govt. Pleader, for the Appellant; G.S. Raisinghani, for the Respondent

Judgement

Bavdekar, J.—This is a reference made to this Court by the learned Sessions Judge, East Khandesh, Jalgaon, for quashing the conviction of one Sundarlal Govardhan, who had been convicted by the Judicial Magistrate, First Class, First Court, Bhusawal, of an offence u/s 124, Bombay Police Act.

2. The Prosecution case was that upon some suspicion the police searched the house of Sundarlal and failed to find anything in connection with the offence which they were investigating. Sunderlal was, however, found in possession of one woollen blanket, five sarees, and two pairs of white canvas shoes. He was prosecuted for an offence u/s 124, Bombay Police Act.

3. His defence was that he had purchased these articles from various hawkers for the purpose of his wife and his two children who were at his native place. The learned Magistrate disbelieved this defence; disbelieved that he has got as a matter of fact either wife or children, convicted him and sentenced him to pay a fine of Rs. 100/- in default to undergo rigorous imprisonment for 20 days.

The learned Sessions Judge has made this reference to this Court saying "that in the first instance there was no reason made out for suspecting that the property was stolen property".

4. This must be accepted. It is obvious that the learned trial Magistrate has not applied his mind to the question as to whether upon the prosecution evidence it could be said that there was any reason to suspect that they were stolen. Now, the officer who secured them gave evidence, but he did not give any reason why he suspected that these articles were stolen.

Undoubtedly there are among the articles five sarees, and if the five sarees were found with a person who had no wife, one could understand that there may be reason to suspect that the articles are stolen just as much as if there were found a number of childrens' clothes with a man who had no child there may be reason for suspecting that the clothes were stolen.

But in this case the officer, who gave evidence did not say that Sundarlal had no wife and had no children. "Consequently the prosecution had to start without making out that there were any reasons for suspecting that the property was stolen. There could be ,no question, therefore, of calling upon the accused person to account for his possession of the property".

5. I therefore set aside the conviction and the sentence passed upon the accused and direct that if the fine has been paid it should be refunded.

6. Conviction and sentence set aside.