
(1968) 06 BOM CK 0010

In the Bombay High Court

Case No : Criminal Revision Application No. 13 of 1968

State of Maharashtra

APPELLANT

Vs

Hussein Ahmed Aliji

RESPONDENT

Date of Decision : 12-06-1968

Acts Referred:

Bombay Police Act, 1951 — Section 124

Citation : (1968) 06 BOM CK 0010

Hon'ble Judges : V.S. Kotwal, C.J

Bench : Single Bench

Advocate : V.T. Gambhirwala, A.G.P, for the Appellant; T.H. Sardar, for the Respondent

Final Decision : Allowed

Judgement

V.S. Kotwal, J.—On 8th April, 1967 at about 7-30 a.m. two persons Rampatlal Budhai and Khulai Derro who were co-accused with the applicant in this revision were carrying bundles on their head when they were accosted by the Police Constable No. 1398 witness Anant Parshuram (P.W. 1) and a Head Constable who has not been examined. A search of the bundles revealed that they contained cinnamon weighting in all 72 Kgs. The two persons told the police that they were carrying the cinnamon on behalf of the accused No. 1 Hussein Ahmed Aliji the applicant in this revision who was the owner of the cinnamon. Immediately the accused No. 1 who was following the accused Nos. 2 and 3 on reaching the party also told the police that the goods belonged to him and later on at the trial he produced a customs receipt dated 28th May, 1966 which shows that 112 Kgs. of cinnamon were imported into India and customs duty was paid thereon. Mr. Gambhirwala on behalf of the State has taken objection to it being read because he says that it has not been proved. I am afraid, it is too late at the stage of revision to raise such an objection. When the accused produced it, no objection was taken to the receipt going on record and it has been admitted in evidence, and therefore, it must now be read in favour of the accused.

2. The trying Magistrate has explained away this receipt on two grounds. Firstly, that it is 11 months old. The goods were seized on 8th April, 1967 whereas the receipt is dated 28th May, 1966. Secondly, that the receipt is for 112 Kgs. of cinnamon whereas the goods seized were 72 Kgs. only. Neither of these reasons is a convincing ground for rejecting the receipt. That cinnamon can be stored and can remain in good condition for 11 months is not in doubt. At any rate, simply because the receipt happens to be old, no inference can be drawn against the accused that the goods were necessarily stolen property. Secondly, that the quantity is less than that mentioned in the receipt also seems to me perfectly irrelevant because a part of the goods comprised in the receipt could as well be carried on that date, and be seized.

3. But apart from all this, it seems to me that the main error in the judgment of the trying Magistrate is that he has not had regard to the requirements of section 124 under which the action was taken. Section 124 says "Whoever has in his possession or conveys in any manner anything which there is reason to believe is stolen property or property fraudulently obtained, shall if he fails to account for such possession or to act to the satisfaction of the Magistrate, on conviction, be punished..... Therefore, the police could only act under this section if " there is reason to believe" that the property is stolen property or property fraudulently obtained. There is absolutely not an iota of evidence in this case to establish that the police had reason to believe that this property was stolen property or property fraudulently obtained.

4. In fact the only evidence on this question in the whole case was given by constable Anant Parshuram (P.W. 1) and all that he says in his evidence is " On suspicion we called two panchas and searched the bundles. The bundles were found to contain cinnamon weighing about 72 Kilo grams ". Suspicion is not same thing as "having reason to believe". The police could have placed some ground before the Magistrate upon which they had reason to believe that this property was stolen property or property fraudulently obtained. Unless that was first established, the accused could not have been searched u/s 124.

5. The Magistrate in this judgment has referred to some circumstances from which he concludes that there is sufficient evidence to believe that the goods were stolen property or property fraudulently obtained. This is what he has stated "Accused failed to examine Shri. Yusuf Seth and the person Abdul Syed to whom the goods are attributed. The goods, are found worth about Rs. 2880/- and considering the price of goods the status of the accused and inconsistent story which he has given in his statement, I may conclude that there is sufficient reason to believe the goods or fraudulently obtained." The requirement of the law is not that the Magistrate should be satisfied or has reason to believe that the goods were stolen property. The requirement of the law is that there should be first reason to believe that the property is stolen property or property fraudulently obtained, before action could be taken. That has not been established in the present case, and in my opinion, therefore, these goods

cannot be dealt with u/s 124 nor can the accused be fined.

6. I allow the revision application, set aside the conviction u/s 124 of the Bombay Police Act and the sentence of fine of Rs. 100/- imposed upon the applicant. The fine if paid shall be refunded. The order proclaiming the Muddemal property is also set aside. The cinnamon and articles to be returned to the applicant.