

**(1973) 11 BOM CK 0014**  
**In the Bombay High Court**  
**Case No : Criminal Appeal No. 963 of 1972**

State of Maharashtra

APPELLANT

Vs

Lingayya Kariappa

RESPONDENT

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**Date of Decision :** 27-11-1973

**Acts Referred:**

Bombay Police Act, 1951 — Section 124

**Citation :** (1973) 11 BOM CK 0014

**Hon'ble Judges :** B.A. Masodkar, J

**Bench :** Single Bench

**Advocate :** B.D. Kamble, A.G.P, for the Appellant; T.H. Sardar, for the Respondent

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## Judgement

B.A. Masodkar, J.—The 17th Court of Presidency Magistrate, Mazgaon, Bombay has convicted the present accused u/s 124 of the Bombay Police Act and it appears that the judgment of conviction and consequently of the sentence is not at all tenable under the facts and circumstances of the case.

2. To prove the case the prosecution purported to examine one witness P.W. 1, Maruti K. Pathak, who stated that on December 3, 1971 at about 11.30 p.m. He had found the accused behind Housing Board Building No. 12 at Kalachowki having copper wire bundle in his right hand. He stated that as soon as the accused saw him he retraced his steps and thereupon he detained him as he suspected the property to be stolen. He took charge of the property and drew a proper panchanama and took the accused and the property to the Police Station where an offence u/s 124 Bombay Police Act was registered. In the cross-examination of this witness suggestion was given to him that the accused gave proper address and further had given him the explanation why he was carrying the copper wire (Exhibit "A") which he admits to be that which remains when the plastic cover of the electric wire is burnt. It is put to him that accused had told him that the brother of the accused had taken a contract in a Baithi Chawl at Ambewadi and that accused was assisting his brother in rewiring. This is all the

evidence led by the prosecution.

3. The learned Assistant Government Pleader, Mr. Kamble, admitting candidly conceded that along with the charge sheet filed in the Court, the panchanama drawn by this witness was filed but surprisingly the prosecution had not proved the said panchanama. No panch witness was also examined. Though it is the case of P.W. 1 Maruti Krishna Pathak, that it was he who had made the panchanama the same has not been brought on record.

4. These are the serious lacunae in the case of the prosecution of the present time. Not only the prosecution has to establish that there were a suspicious circumstances under which the accused was found but they must also put all the material under which the accused was detained so that the Court can draw a reasonable inference that there were grounds to believe that the property which the accused was concerned with could be reasonably be treated to be the stolen one. There is hardly any evidence led by the prosecution in this regard excepting the fact that it was at 11.30 p.m. P.W. 1 saw the accused with a copper wire bundle in his right hand like Exhibit "A". The defence of the accused had been that he was assisting his brother who was a wireman and had taken a contract in Abhudaya Nagar, Kalachowky, his presence along with property was explained by him. There was also the oath taken by P.W. 1 Pentayya Kriappa to support the defence that accused is his brother and was helping him in the work of rewiring.

5. It is enough to State that the prosecution in this particular case has miserably failed to bring home the charge to the accused. Unless the panchanama was proved one cannot take into account the contents of the same. Had the panch witness been examined and the panchanama proved it would have been shown that accused had given his own address and that would have on the contrary strengthened his defence.

6. Under such circumstances the word of P.W. 1, Maruti cannot help the prosecution for sustaining, the conviction u/s 124 of the Bombay Police Act. Accordingly, the conviction is set aside and so also the sentence. Fine if paid shall be refunded to the accused. Bail bond of the accused shall stand cancelled. The bundle of copper wire seized from the accused, if it is not destroyed may be returned to the accused.