

(1986) 03 BOM CK 0052
In the Bombay High Court
Case No : Criminal Appeal No. 352 of 1985

State of Maharashtra

APPELLANT

Vs

Ramjan Abdul Masalman

RESPONDENT

Date of Decision : 18-03-1986

Acts Referred:

Bombay Police Act, 1951 — Section 124
Criminal Procedure Code, 1973 (CrPC) — Section 313

Citation : (1986) 3 BomCR 54

Hon'ble Judges : A.D. Tated, J

Bench : Single Bench

Advocate : K.H. Chopda, P.P, for the Appellant; R.P. Kadam, for the Respondent

Final Decision : Dismissed

Judgement

A.D. Tated, J.—The State preferred this appeal against the order of acquittal passed by the learned Chief Judicial Magistrate, Thane in Summary Case No. 6103 of 1984 acquitting the respondent Ramjam Abdul Musalman of the offence u/s 124 of the Bombay Police Act.

2. The Police Head Constable Bhimrao Mahadu Mahajan along with other constable was on patrolling duty on Sion-Panvel way on 21-8-1984 at about 1.30 P.M. At that time they noticed the accused (respondent) carrying 17 Iron pipes of 1/2 inch diameter and of length 10 feet of each on a handcart. On a street by the side of Sion-Panvel Road near Vashi when interrogated the accused did not give satisfactory explanation in respect of his possession of those iron pipes. Therefore, the complainant Head Constable suspected them to be stolen property fraudulently obtained and in the presence of two panchas seized the property after drawing a panchanama." They took the accused and the property at the Police Station, Turbhe. The Head Constable submitted his report along with the panchnama and also produced the accused and the property at the Police Station. After necessary investigation the respondent was prosecuted in the Court of the Chief Judicial Magistrate. Thane, for the offence u/s 124 of Bombay

Police Act. The learned trial Judge on considering the evidence produced by the prosecution found that the charge levelled against the accused was not proved and therefore, he acquitted the accused of the offence u/s 124 of the Bombay Police Act and ordered the property to be returned to the accused.

3. Feeling aggrieved the State has come up in appeal.

4. The learned Public Prosecutor contends that the Chief Judicial Magistrate was wrong in disbelieving the testimony of the Head Constable Bhimrao Mahajan and in order the acquittal of the accused. He submits that the accused had not given satisfactory explanation for possessing the property and, therefore, the learned Chief Judicial Magistrate should have convicted him of the offence u/s 124 of the Bombay Police Act. The learned Counsel for the respondent accused on the other hand contends that the prosecution led no evidence to prove that the Police had reason to believe that the property found in the possession of the respondent was either stolen or fraudulently obtained. He also submits that the learned Chief Judicial Magistrate also did not give any opportunity to the respondent to account for possession of the said property. Therefore, according to him, it would not be proper for this Court to interfere with the order to acquit passed by the learned Chief Judicial Magistrate.

5. The prosecution examined only one witness i.e. Head Constable Bhimrao Mahajan (P.W. I). Bhimrao Mahajan gave evidence that on 21-8-84 at 1.30 P.M. while he and other Police Constables were on patrolling duty, he saw the accused carrying iron bars on his handcart. He states that he made an enquiry with the accused about the possession of the property, but he could not give satisfactory answer and hence the property was attached after drawing the panchnama (Ex. 5). During the cross examination he denied the suggestion that the property in question was scrap material belonging to the accused. None of the panchas in whose presence the property was seized has been examined. The accused was carrying the iron bars in a handcart in broad day light. The Head Constable states that it was 1.30 P.M. when he noticed the accused carrying the iron bars. He has not put forth any circumstances which made him suspect that the property, the accused was carrying was stolen or fraudulently obtained. The learned Chief Judicial Magistrate did not examine the accused u/s 313 of the Criminal Procedure Code and he has not allowed to account for his possession of the property. The reading of section 124 of the Bombay Police Act shows that there are three ingredients which must be satisfied in order to attract applicability of the section and to bring guilt home to the accused. The first is that the accused must be in the possession of the property or he must have conveyed it or offered it for sale or own; the second is that the property must be one in respect of which the Court has reason to believe that it is either stolen - property or property fraudulently obtained and the third is that the accused must be unable to account for his possession or act to the satisfaction of the Magistrate. If these three ingredients are fulfilled, the accused is liable to be convicted of the offence u/s 124 of the Bombay Police Act, as has been laid down by the Supreme

Court in Champaklal Ganeshmal Vs. The State of Maharashtra, . In the present case on the evidence adduced by the prosecution it is not possible to hold that there was a reason to believe that the property was either stolen or fraudulently obtained. The accused was not called upon to account for his possession of the property by examining him u/s 313 of the Criminal Procedure Code. Therefore, it cannot be held that the prosecution proved the offence u/s 124 of the Bombay Police Act in this case.

6. The learned Public Prosecutor submits that the learned Chief Judicial Magistrate was wrong in not examining the accused u/s 313 of the Criminal Procedure Code and in not giving him an opportunity and the matter should be remanded to the trial Court of examining the accused u/s 313 of the Criminal Procedure Code and for fresh decision. Thereafter the accused was arrested on 21-8-1984 . He was in custody pending trial in the trial Court and he has been again arrested u/s 390 of the Criminal Procedure Code on 5-10-1985 and he continues in jail till today. Under such circumstances though the learned Chief Judicial Magistrate has committed serious illegality in not examining the accused u/s 313 of the Criminal Procedure Code. I do not think it proper to remand the case for re-trial. There are no compelling reasons to set aside the acquittal of the accused. Hence the appeal is dismissed and the acquittal of the accused, though for different reason is confirmed. The accused shall be released forth if not required in any other case.