

REVISIONAL CRIMINAL

Before Mr. Justice E. M. Nanavutty

RAMESHWAR SINGH (APPLICANT) *v.* KING-EMPEROR
(COMPLAINANT OPPOSITE-PARTY)

1936
February, 7

*Indian Penal Code (Act XLV of 1860), sections 24 and 378—
Theft—Temporary removal of a thing without criminal intent or intention to cause wrongful gain or loss, whether amounts to theft—Criminal intent, whether essential in theft.*

If a person had no criminal intent in taking away an article and if he did not take it dishonestly within the meaning of term as defined in the Indian Penal Code, then his taking away of the article does not amount to theft.

Where, therefore, a respectable person just pinches away the cycle of another person, as his own cycle at the time was missing, and brings it back and the important element of criminal intention is completely absent and the applicant did not intend by his act to cause wrongful gain to himself it does not amount to theft as defined under section 378, I. P. C.

Dr. J. N. Misra, for the applicant.

The Assistant Government Advocate (Mr. H. K. Ghose), for the Crown.

NANAVUTTY, J.:—This is an application for revision of an appellate judgment of the learned Additional Sessions Judge of Sitapur upholding the judgment of a Special Magistrate of Sitapur convicting the applicant Rameshwar Singh of an offence under section 379, I. P. C., and sentencing him to pay a fine of Rs.100 or in default to undergo rigorous imprisonment for three months.

I have heard the learned counsel for the applicant as also the learned Assistant Government Advocate on behalf of the Crown. The facts found by the lower Court are that the applicant took away a cycle belonging to Babu Mahabir Prasad, Vakil, which had been left in the portico of the District Judge's Court. This cycle

*Criminal Revision No. 10 of 1936, against the order of Mr. Atma Charan, I.C.S., Additional Sessions Judge of Sitapur, dated the 4th of December, 1935.

was subsequently found to have been left by the applicant in the *garikhana* of the Rana of Thangaon. The applicant was accordingly prosecuted on a charge of theft of the bicycle.

The learned Special Magistrate held the applicant guilty of an offence under section 379, I. P. C., but considered his offence to be a technical one and as he was a person of respectable position, he sentenced him only to simple imprisonment till the rising of the Court and to pay a fine of Rs.350 or in default to undergo six months' rigorous imprisonment. In appeal the learned Additional Sessions Judge held that the offence was a technical one and that the accused "had no criminal intent or ulterior motive in taking away the cycle" and he therefore reduced the fine from Rs.350 to one of Rs.100. The applicant has now come up in revision against the order of the learned Additional Sessions Judge and his learned counsel has argued that upon the finding of the lower appellate Court that "Rameshwar Singh accused did not commit theft but just pinched away the cycle of Babu Mahabir Prasad as his own cycle at the time was missing", the applicant is entitled to an acquittal. In my opinion this contention must prevail. Section 378 of the Indian Penal Code defines theft as follows:

"Whoever, intending to take dishonestly any movable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft".

Here in this case the important element of criminal intention has been found by the lower appellate Court as a fact to be completely absent. If the applicant Rameshwar Singh had no criminal intent in taking away the cycle of Babu Mahabir Prasad and if he did not take it dishonestly within the meaning of the term as defined in the Indian Penal Code, then his taking away of the cycle does not fall within the definition of theft.

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Section 24 of the Indian Penal Code defines the word 'dishonestly' as follows:

"Whoever does anything with the intention of causing wrongful gain to one person, or wrongful loss to another person is said to do that thing dishonestly".

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Here it is proved to the satisfaction of the lower appellate Court that the applicant did not intend by his act to cause wrongful gain to himself, and the temporary loss of the use of his cycle by Babu Mahabir Prasad, Vakil, was not such a loss about which even Babu Mahabir Prasad himself has complained. In these circumstances it seems to me that the stigma of theft cannot be imputed to a respectable person of the position of the applicant.

For the reasons given above, I allow this application for revision, set aside the conviction and sentence passed upon the applicant and order that the fine if paid be refunded.

Application allowed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava

1936
February, 7

RIYASAT ALI AND ANOTHER (DEFENDANTS-APPELLANTS) v.
ZAMIN ALI AND ANOTHER (PLAINTIFFS-RESPONDENTS)*

Perpetual injunction to close drain—Nuisance—Finding that latrine drain is always a nuisance without reference to evidence, whether good.

Where in a suit for perpetual injunction to close the drain of a latrine, the Court without referring to the evidence orders the closing of the drain remarking that the water discharged from an Indian latrine is always foul and stinking and should as a rule be treated as a nuisance, *held*, that the finding based on a sweeping statement of the kind without reference to the evidence on the point cannot be sustained.

*Second Civil Appeal No. 285 of 1934, against the decree of Pandit Girja Shankar Misra, Additional Subordinate Judge, Lucknow, dated the 14th of August, 1934, reversing the decree of Babu Hiran Kumar Ghoshal, Munsif, Haveli, Lucknow, dated the 22nd of December, 1933.