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BASANTA KUMARI DASI v. MAHESH CHANDRA LAHA.

Legislature really intended to exclude from the operation of section 145 the very property which is most prolific of disputes leading to a breach of the peace. I agree, therefore, to discharge the Rule.

E. H. M. *Rule discharged.*

CRIMINAL REVISION.

Before Imam and Chapman JJ.

1913

April 30.

SHEWDHAR SUKUL

v.

EMPEROR*.

Dishonestly receiving stolen property—Receipt of property—Production of the railway receipt, payment of freight and taking of formal delivery—Property not actually removed, or attempted to be removed, from railway premises—Penal Code (Act XLV of 1860), s. 411.

Where the consignee presented a railway receipt for certain stolen goods to the station-master, paid the freight and received formal delivery of the package from the latter:

Held, that the goods had come to be not merely in the potential possession of the consignee, but actually within his power and unrestricted control, though he had not removed them from the station where they were then lying, nor made any attempt to do so, and that he had received them within s. 411 of the Penal Code.

Reg. v. *Hill* (1) distinguished.

ON the 14th December 1912, a box, No. 8570, containing certain cloths, marked 1058, was received by the firm of Ramkissen Jaiparmal, of 201, Harrison Road, and taken to their godown in Shama Bai's Lane, where

* Criminal Revision No. 442 of 1913, against the order of R. D. Chatterjee, Fifth Presidency Magistrate, Calcutta, dated Feb. 26, 1913.

(1) (1849) 3 Cox C. C. 533 : 1 Den. C. C. 453.

it was kept outside on the ledge. The package was missed on the 25th, and Hari Bux, a *munim* of the firm, reported the theft at the Jora Bagan thana on the 27th. From certain information received by him, he sent one Seo Sagar, a jemadar employed in the firm, to Takia, a railway station on the Oudh and Rohilkhand Railway. The latter arrived there on the 29th, found the box covered with gunny cloth bearing No. 671, on the station, and informed the station-master and the railway head-constable that it belonged to his master and had been stolen. It appeared that the box was despatched from Howrah on the 17th December, and reached Takia on the 29th. The name of the consignor entered on the railway receipt was *Raja Ram, Sada Ram*, and that of the consignee *Raja Ram, Shewdhar Sukul*. On the morning of the 29th, at about 7 or 7-30 A. M., some person went to the railway station with the railway receipt, but the station-master refused him delivery, as he stated that he was not the owner. The jemadar, Seo Sagar, then told the station-master that he would go and bring the consignee, and at about 10 A. M. he returned to the station with the petitioner, who presented the receipt to the station-master, paid the freight due on the consignment and received *formal* delivery (as was found by the Magistrate in his judgment and explanation). The petitioner was then informed of the theft of the box, and replied that he did know whether it was stolen property or not, and that, if it was so, the station-master might keep it and inform the police. The petitioner did not touch the box nor did he attempt to remove it from the station. The railway head-constable was then communicated with, and he came and took possession of the box (which was then opened in the presence of the petitioner) and its contents. He released the petitioner on his own

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recognizances, there being no sufficient evidence, in his opinion, of guilty knowledge on the part of the latter.

It appeared that there was a large fair then being held at Takia, that the petitioner had a stall there for the sale of piece-goods, and that during the period that the fair lasted a large number of packages were despatched to this station for various consignees.

The petitioner was arrested in Calcutta on the 20th January, 1913, and placed on trial before the Fifth Presidency Magistrate on a charge under s. 411 of the Penal Code. It was proved that the alleged consignors had no existence. The Magistrate convicted the petitioner, on the 26th February, and sentenced him to six months' rigorous imprisonment. He thereupon moved the High Court and obtained this Rule to set aside the conviction and sentence on the ground that the production of the railway receipt did not establish his possession. In his judgment and explanation the Magistrate referred to and relied on *Kashi Nath Bania* v. *Emperor* (1).

Babu Kherode Lal Sen, for the petitioner (after dealing with the facts). The case of *Kashi Nath Bania* v. *Emperor* (1) is distinguishable. There the accused denied the finding of the receipt in his possession, whereas in the present case he produced it himself. The authority of that decision has, besides, been weakened by the later ruling of *Ashruf Ali* v. *Emperor* (2). The facts do not constitute *receipt* of stolen property within s. 411 of the Penal Code. The accused never came into *actual* possession of it. After paying the freight, when he was informed of the property having been stolen, he told the station-master that if it was so the latter might keep it

(1) (1905) I. L. R. 32. Calc. 557. (2) (1909) I. L. R. 36 Calc 1016.

himself. The petitioner did not remove the box nor did he call a coolie or make any other attempt to remove it from the railway station. The case falls within the rule in *Reg* v. *Hill* (1).

The Deputy Legal Remembrancer (*Mr. Orr*), for the Crown. The facts found by the Magistrate are sufficient to support the conviction: *Kashi Nath Bania* v. *Emperor* (2).

IMAM AND CHAPMAN JJ. This was a Rule calling on the Chief Presidency Magistrate to show cause why the conviction should not be set aside on the ground that the production of the railway receipt does not establish the possession of the petitioner.

The petitioner was prosecuted for receiving stolen property, under section 411 of the Indian Penal Code, in the form of a package containing some piece-goods, at the railway station Takia, on the Oudh and Rohilkhand Railway. The goods belonged to a firm of dealers of the name of Ramkissen Das Jaiparmal, and were missed from their godown on the 25th December, 1912. Information of the disappearance of the package was given to the police on the 27th December, and it seems that, on the 28th December, Seo Sagar, a jemadar of that firm, having come to know that the goods had been despatched to Takia, started for that railway station. On arrival at Takia on the following morning, 29th December, he informed the station-master of the incident after he had found the package in question at the railway station amongst the goods that had to be delivered to various consignees. That morning, at 7 A. M. or thereabout, a man other than the petitioner came to take delivery of the goods, but on being questioned by the station-master he was not

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able to satisfy that officer that he was entitled to receive the goods. That man was sent away, and it seems that Seo Sagar said that he could bring the petitioner, Shewdhar Sukul, to whom the goods had been consigned for taking delivery, and, as a matter of fact, at about 10 A. M. Shewdhar Sukul, accompanied by Seo Sagar, came to the station, presented the railway receipt before the station-master, paid the freight for the goods and received delivery of the goods from the station-master.

It is contended on behalf of the petitioner that no actual delivery took place, because, although the receipt had been returned to the railway office and the freight paid, the goods had not, as a matter of fact, been removed by the petitioner, and that, therefore, the transaction could not be construed either into receiving the goods or having possession over them.

Information of this receiving of stolen goods was given at once to the police, and the petitioner was arrested. The petitioner's defence in the lower Court was that, at the time when the goods came to Takia, a large and popular fair was held at that place and the petitioner had a shop of piece-goods and things of sorts at that fair. It was further contended that the goods, as a matter of fact, had been brought to Takia by Seo Sagar, and the railway receipt was handed to the petitioner, and the petitioner was brought by him to the railway station to receive the goods; that, in these circumstances, the petitioner was quite innocent and knew nothing as to the stolen character of the articles in question, and that he could not be convicted under section 411 of the Indian Penal Code.

The facts found by the learned Presidency Magistrate are that, as a matter of fact, the goods had disappeared from the godown of Ramkissen Das Jaiparmal some time before the 24th December; that

they had been despatched to Takia; that at that station the petitioner had received the goods; that he has not been able to account for the possession or the fact of his receiving the goods.

The Rule in this case is limited to the construction that is to be placed on the possession of the railway receipt, or the production of it by the petitioner.

There might have been something said in favour of the petitioner if the matter had ended with the mere production of the railway receipt; but we see in this case that, after the production of the railway receipt, the delivery of the goods had been effected. The station-master swears that delivery was made. He further says that freight had been paid by the petitioner. We are not in a position to accept the petitioner's contention that unless and until he had removed the goods from the railway premises he could not be declared to have received the goods. The case of *Reg* v. *Hill* (1) has been cited to us as an authority on which this conviction is sought to be set aside. The judgment in that case proceeded on the prisoner never having in fact received the stolen property, and never having had power over it. That cannot be said to be the case in the present instance. After the delivery of the goods by the station-master, they came to be not merely in the potential possession of the petitioner, but actually within his power and unrestricted control. It was open to him to do as he liked with the goods; he could have removed them without let or hindrance to any place wheresoever he might have wished them to be carried, the possession of the Railway Company having, from the moment of the delivery, ceased, and that of the petitioner having commenced. In these circumstances, we do not see how the Rule in the terms

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in which it was issued can be made absolute. We are, therefore, not prepared to set aside this conviction.

We have been asked by the learned vakil on behalf of the petitioner to consider the question of sentence. The petitioner has been sentenced to a term of six months' rigorous imprisonment, and it is said that he does not deserve such a severe punishment, inasmuch as he offered to the station-master that, as the goods were represented to be stolen, they might be kept by the station-master and that information of the goods being stolen might be given to the police. Had this offer been made by the petitioner to the station-master before the delivery of the goods, the question of *locus pœnitentiæ* might easily have been raised. That, however, does not arise in the circumstances of this case. We are inclined to think that as soon as the petitioner discovered that people knew that the goods were stolen he possibly was penitent; but because of the penitence of the petitioner if we were to reduce his punishment, we would be encouraging the receipt of stolen property by others. Most of these cases of receipt of stolen property disclose that the thefts would not probably have taken place if the receivers had not encouraged the thefts. In this case, whatever might be said in respect of the penitence of the petitioner, one fact stands out very prominently against him, and that is, that even at the trial he did not disclose the name of the person who had consigned the goods to him. He attemped to show that Seo Sagar was the consignee, that he (Seo Sagar) had brought the goods to Takia and had attempted to get the petitioner into trouble, and here at the bar, it has been argued that Seo Sagar is the real thief.

Upon the facts that have been disclosed in this case, we see not a tittle of evidence to charge Seo

Sagar with the misdeed. We, therefore, considering the conduct of the petitioner in laying a false charge against Seo Sagar and his failure to disclose the name of the real consignor, see no reason to interfere with the sentence. The sentence that has been passed must be undergone by the petitioner. The Rule, therefore, is discharged.

E. H. M. *Rule discharged.*

[END THE VOLUME XL.]