

CALCUTTA HIGH COURT

Hamid Ali Bepari

Vs

Emperor

Suhrawardy, C.J. Cuming, J.)

19.06.1925

JUDGMENT

Cuming, J.

1. This is a rule granted against the order of the learned Additional District Magistrate of Backergunj upholding the conviction of the appellant but reducing the sentence to a fine of Rs. 100. The rule was an open rule. The learned vakil, who appears for the petitioner, has argued that the facts disclosed do not constitute any criminal offence. The facts of the case are as follows:---One Sona Mia, who is the complainant, was taking two cart loads of hide to Daulat Khan Bandar, when the petitioner seized the hides and took them to his own godown. The complainant's case is that he purchased these hides from one Abdul Aziz. The petitioner's case was that he had kept certain hides in Syedpur in charge of Abdul Aziz, and Abdul Ghani in collusion with Abdul Aziz, with whom the petitioner had partnership business, had disposed of these hides to Sona Mia. The Appellate Court found that the hides which were sold to Sona Mia and which Sona Mia was taking to Daulat Khan Bandar, when they were seized by the petitioner, were the property of Abdul Aziz, and that he sold them to Sona Mia; and he held that the petitioner was not If. justified in removing the goods on the ground that he believed that Abdul Aziz owed him some money. He, therefore, upheld the conviction, under Section 379 of the Penal Code. On these facts found I do not think that any charge of theft can be sustained against the petitioner. The essence of the offence of theft is dishonestly taking of movable property out of the possession of some person; "dishonestly" has been defined in Section 24 of the Indian Penal Code. A person is said to do an act dishonestly when he does it with the intention of causing wrongful gain to one person, or wrongful loss to another person. But in the present case the facts will not go to show that the appellants intended to cause any wrongful gain to himself or any wrongful loss to the complainant. He apparently acted perfectly straightforwardly throughout the transaction by keeping the goods in his own godown, and did not make any attempt to dispose of them. It seems to us that the petitioner was acting under a mistaken notion of Jaw, believing that the property was his, and that he had the right to take the goods until the balance of the money was paid. In the absence of any dishonest intention, we do not think that the charge of theft can be sustained.

2. We, therefore, make the rule absolute, and set aside the conviction of, and the sentence passed upon, the petitioner. The fine if paid will be refunded.

Suhrawardy J.

3. I agree.