

# BOMBAY HIGH COURT

Pratap Baburao Bhosale

Vs.

The State of Maharashtra

Criminal Appeal No. 642 of 1969 (with Criminal Appeals Nos. 617 and 643 of 1969) in Case No. 1394 P. of 1968. 1 (1952) Criminal Revision Application No. 801 of 1952

(Vimadalal, J.)

19.01.1970

## JUDGMENT

### **Vimadalal, J.**

1. This is an appeal by the accused, who was convicted by the Presidency Magistrate, 18th Court, Girgaum, Bombay on March 31, 1969, of the offence under Section 124 of the Bombay Police Act, 1951 and sentenced to rigorous imprisonment for three months. It is material for the purpose of disposing of the present appeal to quote Section 124 of the Bombay Police Act, which is in the following terms:

"124. Whoever has in his possession or conveys in any manner, or offers for sale or pawn, anything which there is reason to believe is stolen property or property fraudulently obtained, shall, if he fails to account for such possession or to act to the satisfaction of the Magistrate, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to one hundred rupees or with both."

The facts necessary for the purpose of disposing of the present appeal are that on September 4, 1967 a complaint had been filed by one Manekchand that he had been cheated by some persons, while he was on the way to purchase utensils with a large amount of cash and the cash was taken away from him. It was in connection with that offence that the accused in the present case was arrested by Sub-Inspector Dabholkar on the morning of September 7, 1967. The prosecution case is that, shortly after his arrest the accused made a statement leading to the recovery of 4 gold biscuits and an amount of ₹ 3,500 in cash from the house of the accused's father-in-law, which statement has been admitted in evidence under Section 27 of the Evidence Act. The prosecution story is that after having made that statement, the accused led the police party and the panchas to his father-in-law's flat in Sitaram Building at Crawford Market, took out a key from the pocket of

a trouser hanging on a nail, opened a tin box with that key and took out from it a plastic bag from which the accused produced 4 gold biscuits with foreign markings and a sum of ₹ 3,500 in Government Currency notes. After investigation was completed, the accused was charged under Section 124 of the Bombay Police Act, 1951, with the offence of having been found in possession of the said 4 gold biscuits and the cash of ₹ 8,500 "which there is reason to believe is stolen property fraudulently obtained," and had thereby committed an offence under the said section.

2. The fact of the recovery of the four fold biscuits is disputed by the accused. According to him, a sum of ₹ 8,500 in cash was recovered from his father-in-law's flat at his instance, but he has stoutly denied that any gold biscuits were recovered along with the currency notes. In course of the hearing of this appeal before me, Mrs. Ponda pointed out what, according to her, were the infirmities in the evidence relating to the alleged recovery of the four gold biscuits. She has relied on the fact that while the signatures of the panchas were taken on the currency notes, their signatures were not taken either on the gold biscuits, or any piece of paper attached to them, or on the packet in which the gold pieces were alleged to have been wrapped according to Sub-Inspector Dabholkar himself. She has also pointed out that the punch witness who has been examined has in his statement denied having put his signature even on the currency notes. She has pointed out that the gold pieces have not been exhibited in this case and has further submitted that there is no reason why the evidence of R. J. Jadhav, the father-in-law of the accused, who was examined, as a defense witness, should not have been accepted by the Court. I do not think any of these grounds are sufficient to disbelieve the evidence of the punch witness and the Police Officer in regard to the recovery of the four gold biscuits at the instance of the accused from the house of his father-in-law. The mere negative fact that the signature of the panchas was not taken on the paper in which the gold pieces were wrapped is, in my opinion, not sufficient to discard the testimony of the Sub-Inspector Dabholkar or of the panch. The Police Officer may have found it difficult to take signatures on the gold pieces themselves, and it might not have struck him that he could obtain the signatures on the paper in which the same were wrapped. In any case, even if the signature was taken on a separate piece of paper, that might perhaps not have been sufficient to identify the gold pieces themselves. The discrepancy with regard to the evidence of the Sub-Inspector and the panch in regard to the point as to whether the signatures of the panch were taken on the currency notes might have assumed importance, if the recovery of the currency notes had been denied but that is not the case. Mrs. Ponda no doubt contended that this discrepancy goes to discredit the evidence of the panch witness, but the answer that was elicited from the panch witness in course of the cross-examination was a general answer to the effect that on currency notes signatures were not taken, which may be a matter of recollection or failure of recollection on his part. If the panch witness had been categorically asked whether the signature on the currency notes shown to him was his signature or not and he had denied it, there might have been some substance in the contention of Mrs. Ponda that the prosecution evidence is discrepant and should not be accepted. The fact that the four gold biscuits have not been

exhibited also does not, in my opinion, warrant disregarding totally the evidence of the Police Officer as well as the panch witness. This was obviously an over-sight on the part of the prosecution in the trial Court, The fact that the gold biscuits were actually before the trial Court and were shown to the witnesses and they have identified them and stated that they bore foreign markings shows that merely because gold biscuits were not exhibited cannot lead to the conclusion that no gold biscuits were recovered, or to the conclusion that they did not bear foreign markings, or to the conclusion that the prosecution witnesses, when they deposed to the recovery of the gold biscuits, were not telling the truth. As far as the evidence of the accused's father-in-law, as a defence witness, is concerned, the trial Magistrate has dealt with the same in para. No. 9 of his judgment and has pointed out the infirmities in his evidence and has given his reasons for rejecting the evidence of R. J. Jadhav, the father-in-law of the accused, and I see no reason to take a different view in regard to the same. In the result I hold that the learned trial Magistrate has rightly come to the conclusion that the four gold biscuits in question were recovered along with the cash of ₹ 3,500 from the house of the accused's father-in-law at the instance of the accused.

3. In order to bring home the offence under Section 124 of the Bombay Police Act, 1951\* it is, however, incumbent upon the prosecution to prove not merely possession of the property in question, but the prosecution has further to show that there is reason to believe that the property is either stolen property, or has been "fraudulently obtained." It may at once be clarified that the charge against the accused relates not merely to the four gold biscuits but also to the cash of ₹ 3,500. Indeed, Mr. Gambhirwala has not been able to point out anything which leads to the inference that there is reason to believe that the said property was the stolen property. Mr. Gambhirwala has, however, strongly contended that from the facts and circumstances of the case it must be inferred that it was the property which had been "fraudulently obtained" within the terms of the said Section 124 of the Bombay Police Act, 1951, The circumstances, which he has relied upon for that purpose are : (1) it had not been kept by the accused at his own place ; (2) it was kept in a locked tin the key of which was in the pocket of a trouser hanging on the wall in the flat of the father-in-law of the accused; (3) gold is a prohibited article and (4) the accused who was earning a salary of ₹ 250 to 300 per month since the last three years did not have the means to acquire legitimately either the said gold biscuits or the said cash of ₹ 3,500. I am afraid none of these facts, nor all of them cumulatively, can lead to the inference that either the said four gold biscuits or the said cash amount had been "fraudulently obtained" by the accused. In this connection, as contended by Mrs. Ponda, it is important to bear in mind that the material words of Section 124 of the Bombay Police Act are "fraudulently obtained," and not "fraudulently possessed," with the result that what must be proved by the prosecution is that not merely that the possession of the accused at the time when the property was recovered was "fraudulent," but that the manner in which the property had been acquired by the accused was "fraudulent." That can be the only meaning of the word "obtained" as a matter of plain English. It

would, therefore, serve no useful purpose to say merely that the accused illegitimately possessed the gold in question. It must further be shown that the same had been acquired "fraudulently" by the accused. As far as the first of the four factors relied upon by Mr. Gambhirwala is concerned, there is no substance in the same, for the simple reason that the trial Court has itself found that the accused was staying at his father-in-law's place at the time of Ganpati festival which, it may be stated, fell during the first week of September 1967. Moreover, the place from which the property in question was recovered was, after all, not the place of a stranger, but. was the place of the accused's own father-in-law and it must not be forgotten that the key of the tin in which the same was found was taken out by the accused from the pocket of the trouser hanging at that place, which presumably must be his own trouser. The second circumstance relied upon by Mr. Gambhirwala viz., the manner in which the gold biscuits and the cash were kept, has perhaps still less substance in it for the simple reason that people do not keep gold or large amounts in cash without the container being locked or in a manner in which they are open to public gaze. As far as the third circumstance relied upon by Mr. Gambhirwala viz., that gold is a prohibited article, is concerned, it is not an article that is absolutely prohibited, but as the Notification of the Government of India in the Gazette dated March 25, 1947 issued under Section 8 of the Foreign Exchange Regulation Act, 1947 shows, it could be brought into India "with the general or special permission of the Reserve Bank." It is very pertinent to note that there is no evidence in the present case to show that the gold in question had been brought into India, whosoever brought it, without the general or special permission of the Reserve Bank, This fact relied upon by Mr. Gambhirwala cannot, therefore, be of any value to the prosecution. As far as the last fact relied upon by Mr. Gambhirwala viz., that the accused did not have the means to acquire the gold worth of ₹ 8,000 and the cash amount of Hs. 8,500, is concerned, to accept that contention would amount to calling upon the accused to explain how he acquired that property. As held by my learned brother Bavdekar in his judgment in *Dallaram Motijee v. State of Bombay*<sup>1</sup> decided by Bavdekar J. on September 5, 1952 (Unrep.), the question of calling upon an accused person to explain how he came into possession of the property in question does not arise, till the prosecution has, in the first instance, proved that there was reason for believing that that property was the stolen property or property which had been "fraudulently obtained." It may be mentioned that as far as the sum of ₹ 3,500 is concerned, the accused's father-in-law, who was examined as a defence witness, as well as the accused himself in his statement under Section 842 of the Criminal Procedure Code, have stated that the same had been collected as and by way of savings by the accused for the purpose of purchasing a flat. The stage of considering whether that explanation should be accepted or not, in my opinion, never arrived, because the prosecution has failed to show that there was reason to believe that the property in question was property "fraudulently obtained" by the accused. Merely because the four gold biscuits which were recovered bore foreign markings cannot lead to that conclusion. As stated by me above, in order to prove the offence under Section 124 of the Bombay Police Act, the prosecution has to establish that the acquisition of the gold was fraudulent. The mere fact that the accused had it, at the time when the Police seized it, in his possession, cannot lead to the inference that there is

reason to believe that the accused had obtained it "fraudulently." In order to sustain that charge or to show that the obtaining of the property by the accused was fraudulent, it must be proved that the accused had obtained the same by practising some sort of deceit upon someone, as deceit is an essential ingredient of fraud. In order to establish that there was reason to believe that the property in question was fraudulently obtained, it must reasonably appear from the proved facts and circumstances of the case that an inference of deceit in the process of acquiring the property can be drawn against the accused, since the element of deceit is implicit in the very conception of fraud. The mere possession of the property, assuming that it was of such a nature that its acquisition was prohibited, would not prove that in obtaining the same the accused had practised any deceit on any body. Cases are not unknown where property, the import of which is legally forbidden, is purchased locally by people. That would be one illustration of a case in which though the property may have been illegally possessed, it cannot be said to have been "fraudulently obtained." In the result I have come to the conclusion that the prosecution has failed to prove the charge against the accused and this appeal must be allowed and the conviction as well as the sentence passed on the accused set aside. Bail bonds cancelled.

<sup>1</sup>(1952) Criminal Revision Application No. 801 of 1952

4. Mrs. Ponda applies that I should order that the sum of ₹ 8,500 seized by the police from the house of the accused's father-in-law at the instance of the accused be returned to the accused. In this respect, reliance has been placed upon the decision of the Supreme Court in the case of *Suleman Issa v. State of Bombay*<sup>2</sup> In the view which I have taken, and having regard to the fact that there are no rival claimants, I must grant that application, and I order accordingly.

Appeal allowed.

<sup>2</sup>(1954) 56 Bom. L.R. 1180 S.C