

(1956) 04 P&H CK 0007

High Court Of Punjab And Haryana At Chandigarh

Case No: None

The State

APPELLANT

Vs

Parkash Singh

RESPONDENT

Date of Decision: April 9, 1956

Acts Referred:

- Constitution of India, 1950 - Article 21
- Evidence Act, 1872 - Section 114
- Penal Code, 1860 (IPC) - Section 380, 411

Citation: (1956) CriLJ 1347

Hon'ble Judges: Kapur, J; Falshaw, J

Bench: Division Bench

Judgement

Falshaw, J.

Parkash Singh respondent was tried by a Magistrate at Ambala and on conviction u/s 411, Penal Code, was sentenced to six months' rigorous imprisonment. He was, however, acquitted in appeal by the learned Sessions Judge, and the present appeal has been filed by the State against the order of acquittal.

2. The facts of the case are that for the convenience of a detachment of troops stationed at Beas there is a canteen housed in the tent and managed by Jagdish Parshad P. W., who, on visiting the canteen at about 6 a.m. on 20-8-1954, found that a burglary had taken place. He reported the matter to Subedar Prahlad Singh, Supervisor of the canteen who in turn reported the matter to Capt. Anthony Divide P. W. the officer in charge of the detachment. The latter submitted a written report at the Beas Police Station on the afternoon of the 20th of August in which he gave a list of the missing articles which included various items of clothing, three thermos flasks, one bottle of brandy and two bottles of whisky.

3. The second stage of the case took place near the Ambala City Railway Station on the afternoon of the 21st of August within 48 hours of the theft in the canteen. The

story is that in consequence of certain information which was received a Police party including members of the public went to the Ambala City Railway Station under the leadership of A. S. I. Gurdip Singh where the accused was said to be going to catch the 3 p.m. train to Barara with stolen property in his possession.

Parkash Singh presently appeared at the station, and when a trunk which was in his possession was opened with a key taken from him, it was found to contain a large number of articles corresponding in description with the property stolen from the canteen as well as other articles. The contents of the trunk included three thermos flasks, a large number of packets of Scissors and Gold Flake cigarettes, some vests corresponding to those described in the report made earlier and, most noteworthy of all, two bottles of Scotch whisky on which in addition to the ordinary labels, there were also labels showing that they were only issued to the army and marked "For canteen service only."

4. The accused denied his guilt and claimed that the articles found in his trunk were his stock-in-trade as a hawker. He alleged that he had been falsely implicated because of the enmity of a Head Constable named Gopal Singh. He produced a few witnesses to testify to his good character and the fact that he had been plying his trade as a hawker. There does not, however, appear to be any doubt whatever that most of the contents of his trunk were in fact property stolen from the canteen at Beas less than 48 hours before the apprehension of the accused at Ambala.

5. In the appeal the learned Sessions Judge, apart from holding to be inadmissible one piece of evidence with which I agree with him regarding its inadmissibility, namely that after his arrest the accused had pointed out the canteen at Beas as the place where the articles recovered from him were stolen, which amounts to a confession without leading to any new discovery, did not think it necessary to discuss the evidence for the purpose of deciding whether the property recovered from the accused was or was not stolen property. He has simply acquitted the accused on the ground that the presumption raised by Section 114, Evidence Act, namely that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for his possession, contravenes the provisions of Article 21 of the Constitution.

I must confess that I am entirely unable to understand this view. All that is laid down in Article 21 of the Constitution is that no person shall be deprived of his life or personal liberty except according to procedure established by law. As far as I am able to understand it, all that is meant by this is that, in order to be deprived of his liberty, a man has to be tried according to the provisions of the Code of Criminal Procedure on a charge relating to some offence specified in the Indian Penal Code or some other statute containing penal provisions, and that the rules governing the evidence to be led at his trial must be those laid down in the Indian Evidence Act.

It seems to me that the view of the learned Sessions Judge would only be well founded if it had been specifically provided in the Constitution that no presumption of any kind were to be drawn against any person accused of an offence. I am therefore of the opinion that the reason given by the learned Sessions Judge for acquitting the accused is wholly unfounded in law, and since I am of the opinion that the evidence conclusively shows that the accused was found within 48 hours of the theft in possession of a considerable quantity of stolen property, for which I do not find his explanation at all satisfactory or convincing, I consider that he was properly convicted and sentenced u/s 411, Penal Code, by the learned trial Magistrate, and indeed he might even have been convicted u/s 380, Penal Code.

The result is that I would accept the appeal of the State and setting aside the order of acquittal, convict Parkash Singh respondent u/s 411, Penal Code, and sentence him to six months" rigorous imprisonment. He must surrender to his bail bond and be sent to prison to serve the remainder of his sentence.

Kapur, J.

6. I agree, and because the matter is of some importance I would like to give my opinion on this question.

7. As I understand it, the learned Sessions Judge seems to have held that Section 114(a), Evidence Act which raises certain presumptions is ultra vires of the Constitution because of Article 21 which toys down:

No person shall be deprived of his life or personal liberty except according to procedure established by law.

Now. this Article was interpreted in [A.K. Gopalan Vs. The State of Madras](#), by all the learned Judges who constituted the Bench. Kania C.J., Mukherjea and Das JJ, held that the word "law" is used in the sense of state-made law and not as equivalent of law in the general sense embodying the principles of natural justice and therefore "procedure established by law" means procedure established by law made by the State, and it is not correct to construe this expression in the light of the meaning given to the expression "due process of law" in the American Constitution.

8. Patanjali Sastri J. interpreted the phrase "procedure established by law" to mean the ordinary well established criminal procedure, i.e., those settled usages and normal modes of procedure sanctioned by the Criminal Procedure Code which is the general law of Criminal Procedure in this country. Fazl Ali, J., however, was of the opinion that this phrase included the principles of elementary justice consisting of notice, opportunity to be heard, impartiality of the Tribunal and orderly course of procedure.

9. As far as I know the view that Section 114(a) is ultra vires because of Article 21 of the Constitution has not the support of any decided case, not even in America where the due process clause applies. The interpretation given by the Supreme Court to

the words "procedure established by law" shows that it relates to statute-made law, and whether the Law of Evidence is procedural or otherwise, it is a statute-made law and therefore is not hit by Article 21 of the Constitution of India. In my opinion, on this point the learned Sessions Judge has taken an erroneous view. On the other matters which have been discussed by my learned brother I have nothing to add and agree with his view.

10. I would, therefore, allow this appeal, set aside the order of acquittal and restore the order of conviction by the learned Magistrate.