

(1918) 06 CAL CK 0050

Calcutta High Court

Case No: None

Sukhu Kalwar

APPELLANT

Vs

Emperor

RESPONDENT

Date of Decision: June 18, 1918**Acts Referred:**

- Calcutta Police Act, 1866 - Section 54(a)
- Penal Code, 1860 (IPC) - Section 411

Citation: 47 Ind. Cas. 657**Hon'ble Judges:** Syed Shamsul Huda, J; Newbould, J**Bench:** Division Bench

Judgement

1. The petitioner has been convicted u/s 54(a) of the Calcutta Police Act, which provides that a person in possession of anything which there is reason to believe to have been stolen or fraudulently obtained shall be liable to punishment, if he fails to account for such possession. The preliminary condition which must be fulfilled before effect can be given to this section is that there must be reason to believe that the property found in the accused's possession was stolen property. The reasons given by the Magistrate for coming to this belief in the present case are stated in his judgment as follows:-- "First, that this silver bar was found along with other articles alleged to have been stolen and claimed by a certain person, about which there was already a case u/s 411, Indian Penal Code, against the accused; secondly, that the accused was asked to produce the key of the box in which these articles were but he did not, and the box had to be broken open by the Police Officer; and thirdly, that the accused failed to account for the bar."

2. As regards the first of these reasons, the accused was acquitted of the charge referred to and in the absence of anything to show that the other articles were stolen, no inference against the accused can be drawn from the fact that this silver bar was found with those other articles. As regards the second of those reasons, the

failure of the accused to produce the key is not shown to have been wilful. His story is that it was not then in his possession, and this has not been rebutted, The third ground is not one on which the Magistrate is justified in finding reason for believing that the property was stolen. He had, first, to find on sufficient materials that there was reason for such belief and it was not until he had come to such a finding that he could consider whether the accused had been able to account for its possession.

3. Taking this view, we make the Rule absolute and set aside the conviction and sentence passed on the petitioner. The petitioner is, acquitted of the offence charged and his bail bond will be discharged.