

Kashi Prasad vs State on 29 June, 1950

Equivalent citations: AIR1950ALL732, AIR 1950 ALLAHABAD 732

JUDGMENT

Brij Mohan Lall, J.

1. This is an appeal by one Kashi Prasad who has been convicted by the learned Additional Sessions Judge of Fatehpur of offences punishable under Sections 235 and 243, Penal Code. For each of these two offences he has been sentenced to undergo five years' rigorous imprisonment and to pay a fine of Rs. 500/-. The sentences of imprisonment are to run concurrently.

2. The appellant was charged with an offence under Section 232, Penal Code, also but he has been acquitted of that offence.

3. It appears that the officer-in-charge police station Khakhreru in district Fatehpur received intimation that the residents of village Amdara were counterfeiting King's coins. He organized a raid and reached village Amdara between 6 and 6 A. M. on 28th December 1947. Several houses were searched. From one of the houses which was during that night at least in the occupation of the appellant a large quantity of materials which could be used for counterfeiting King's coins was recovered. The appellant was prosecuted for the offences mentioned above. The appellant's defence in the Court below was that the house from which recovery was made and in which he was sleeping at the time of the arrival of the police party was not owned by him. His contention was that he belonged to village Sachwara in the district of Allahabad and that he had gone to Amdara on a temporary visit to see his relations. In other words, he denied possession of the objectionable articles. 4. The same point was reiterated by his learned counsel before me. Certain facts, however, stand proved beyond doubt and have not been disputed by the learned counsel for the appellant. The recovery of the objectionable articles was made from a room which is marked ABCD in the map attached to the inspection note of the learned Additional Sessions Judge. At the time of the search the appellant and his wife were sleeping in this very room. This room has no internal connection with the adjoining dalan or with Ram Prasad's shop. There were formerly two doors at places marked E and F but they had been blocked by mud. Thus the appellant was in exclusive possession of the room at the time when the recovery was made.

5. All that is required to convict the appellant is that he should be in possession of the aforesaid material. It is not necessary that he should be the owner of the building in which the material was found stored.

6. The moulds, crucibles and bamboo tubes were found lying on the floor of the room at the time of the search. The counterfeit coins were found kept in an earthen pot which was placed in a basket. It is, therefore, obvious that at least the moulds, crucibles and bamboo tubes were open to view. It

cannot be reasonably contended that the appellant was ignorant of their existence in the room. From the above facts I am satisfied that the appellant was in possession of the objectionable articles at the time of the search.

7. The question of his being a permanent resident of a different village is immaterial. But it may be pointed out that Raj Bahadur Singh station officer did state on oath that it was not a fact that the appellant was a resident of village Sachwara. The appellant produced no evidence to prove that he belonged to Sachwara.

8. The Government expert who examined the articles recovered from the appellant's possession was of the opinion that the coins were counterfeit coins and the moulds, crucibles and other articles could be used for counterfeiting King's coins. His report and deposition have not been challenged.

9. In the circumstances I am of the opinion that the appellant has been rightly convicted of an offence punishable under Section 235, Penal Code.

10. The next question that arises for decision is whether the conviction under Section 243, Penal Code can be upheld. In order to find the appellant guilty of that offence, it must be proved, inter alia, that at the time of coming into possession of the counterfeit coins the appellant knew that the coins were counterfeit. There is no evidence on behalf of the prosecution to impute this knowledge to the appellant at the time when he became possessed of the counterfeit coins. The true legal position is that if a person who innocently comes into possession of counterfeit coins, discovers later on that the coins are counterfeit he does not thereby become liable to punishment under Section 243, Penal Code, if he retains possession of the coins with him. In support of this view a reference may be made to the case of *Kesho Bania v. Emperor*, A. I. R. (28) 1941 Pat 26: (42 Cr. L. J. 301).

11. The learned Deputy Government Advocate cited the case of *Emperor v. Dhanna Singh* 1943 A. W. R. C. C. 31: (A. I. R. (30) 1943 Oudh 335: 44 Cr. L. J. 542). In that case the accused was in the habit of receiving counterfeit coins. After receiving the coins he used to separate the counterfeit coins from genuine coins and used to dispose them of in the market. That case is, therefore, clearly distinguishable from the present one.

12. Since the prosecution has not proved the above ingredient of the offence in the present case the conviction under Section 243, Penal Code must be set aside.

13. Lastly the learned counsel for the appellant has addressed me on the question of sentence. In this connection it may be pointed out that no less than 17 earthen crucibles and 27 sets of earthen moulds were recovered from the appellant's possession. It will, therefore, follow that counterfeit coins were being prepared on a large scale. I am, therefore, not inclined to reduce the sentence awarded by the Court below.

14. In the result the appeal is allowed in part. The conviction recorded and the sentence awarded under Section 243, Penal Code, are set aside. The conviction under Section 235, Penal Code, is upheld. The sentence awarded under that section is maintained. The appellant is on bail. His bail

bonds are cancelled. He must surrender to serve out the sentence.