

COURT OF APPEAL

AJAY SINGH

A

v.

REGINAM

[COURT OF APPEAL—Speight, V. P., Mishra, J. A., O'Regan, J. A.]

B

Criminal Jurisdiction

Date of Hearing: 15th September 1987.  
Delivery of Judgment: 25th September 1987.

C

*Criminal Law—Larceny conviction—appeal grounds mainly procedure could not vitiate finding—Sentence varied since appellant on bail 2 years with no further criminal activity and in employment.*

S. Singh for the Appellant  
N. Shameem for the Respondent

D

Ajay Singh appealed against conviction by the Supreme Court on 6 June 1985 for Larceny and sentence of imprisonment for one year.

The appellant was employed by Martin Motors Limited (Martin) as a car salesman. He arranged to sell a car to Vinesh Prasad. Part of the purchase price was to be paid on delivery and the rest secured by a Bill of Sale. With the deposit he obtained from purchaser, a further sum \$100 in cash. This was provided to cover registration and third party insurance. This sum was never received by Martin. It included the cost of these items in the sum secured by a Bill of Sale.

E

The appellant admitted to receiving the \$100 but claimed it was for anti-rust treatment (not available at Martin's). The money was still with him when the police started their investigation.

F

The three assessors returned a verdict of guilty on the main issues.

The appeal was against sentence and conviction.

Grounds of appeal may be summarised thus:—

G

- (i) that, this being a no-election minor charge, the learned judge erred in not remitting it back to the Magistrate's Court for trial;
- (ii) that the learned judge erred in advising the prosecution to reconsider the charge and permitting them to file a fresh information substituting larceny for fraudulent conversion;
- (iii) that the learned judge erred in permitting the prosecution to re-examine one of their witnesses at the end of the cross-examination; and
- (iv) that the learned judge erred in reading to the assessors only parts of the statement made by the appellant to the police.

H

A The Court found no merit in the grounds though without giving reasons. They were satisfied with the trial judge's dealing with the case. The grounds related mostly to procedural matters and consideration was given to sentence.

*Held:* The appellant had been on bail for more than two years. During that time he had kept out of trouble and obtained steady employment. It was not in the best interests of justice to return him to prison.

B Appeal against conviction dismissed. Appeal against sentence upheld and sentence set aside.

Appellant fined \$250 in default 4 months imprisonment with four weeks to pay.

C Judgment of the Court

MISHRA, J.A.

The appellant was, on 6th June 1985, convicted of larceny by the Supreme Court and sentenced to one year's imprisonment.

D It was a short trial and the facts of the case were simple. The appellant was employed by Martin Motors Limited as a car salesman and, in that capacity, he arranged to sell a car to one Vinesh Prasad, part of the purchase price was to be paid on delivery and the rest secured by a bill of sale. In addition to the cash deposit he obtained from Vinesh Prasad a further sum of \$100 in cash to cover registration and third party insurance. This sum was never received by Martin Motors who included the cost of those two items in the sum secured by the bill of sale.

E The appellant admitted receiving \$100 but claimed that the money was for anti-rust treatment of the car, a facility not available at Martin Motors. The money, he said, was still with him when the police started their investigation.

The three assessors returned the unanimous opinion of guilty.

The appellant appeals against conviction as well as sentence.

F He has put forward 8 grounds of appeal, several of them overlapping, which may be summarised as follows:—

- G
- (i) that, this being a no-election minor charge, the learned judge erred in not remitting it back to the Magistrate's Court for trial;
  - (ii) that the learned judge erred in advising the prosecution to reconsider the charge and permitting them to file a fresh information substituting larceny for fraudulent conversion;
  - (iii) that the learned judge erred in permitting the prosecution to re-examine one of their witnesses at the end of the cross-examination; and
  - (iv) that the learned judge erred in reading to the assessors only parts of the statement made by the appellant to the police.

H We found no merit in any of these grounds and did not call upon Counsel for the respondent to reply. The learned judge was, in our view, correct in dealing with the

COURT OF APPEAL

3

trial in the manner he did and the allegations, most of which relate to procedure cannot be regarded as having in any way vitiated the proceedings.

A

The appeal against conviction is dismissed.

The main thrust of the appeal, however, is against the sentence.

The appellant was, on 28th June 1985, granted bail pending appeal. In the normal course of things this appeal would have been dealt with in November 1985 or, at the latest, in March 1986 but, for some reason, not arising out of any default on the part of the appellant, there was considerable delay in the registry in getting the record ready. More than two years have now passed and the appellant has, in the meantime, kept out of trouble and secured steady employment. It will not, in our view, be in the best interests of justice to deprive him of all that and return him to prison to serve the remainder of his sentence for a comparatively minor offence.

B

The sentence of imprisonment is, therefore, set aside and in its place is substituted a fine of \$250, in default 4 months' imprisonment. He will have four weeks to pay the fine.

C

*Appeal against conviction dismissed; sentence varied.*