

Inter Continental, Agencies Pvt. Ltd. vs Amin Chand Khanna And Anr. on 14 February, 1980

Equivalent citations: AIR1980SC951, 1980CRILJ689, (1980)3SCC103, 1980(12)UJ303(SC), AIR 1980 SUPREME COURT 951, 1980 (3) SCC 103, (1980) SIM LC 277, (1980) ALLCRIR 275, (1980) 2 SCJ 152, (1980) MAD LJ(CRI) 583, 1980 UJ(SC) 303, (1980) SC CR R 266, 1980 CRILR(SC MAH GUJ) 175, 1980 SCC (CRI) 544

Author: O. Chinappa Reddy

Bench: O. Chinnappa Reddy, R.S. Sarkaria

JUDGMENT

O. Chinappa Reddy, J.

1. On a complaint of theft made by the appellant, Inter Continental Agencies Pvt. Ltd., against Ranjit Singh and others, three buses bearing registration numbers PNA-4581, PNA-4881, and PNA-6061 were seized by the Police and apparently produced before the Judicial Magistrate, 1st Class, Amritsar. The appellant as well as the accused sought release of the buses in their favour. On October 7, 1966, the learned Magistrate made an order in the following terms:

'Both the parties agree that Shri Amin Chand be appointed as interim Receiver to ply the buses if possible.

It appears that Shri Amin Chand Khanna was Official Receiver at the time when the order was made. Within a couple of months he was succeeded by Shri Anant Menon as Official Receiver. Thereupon the learned Magistrate, on December 22, 1966, made the following orders:

Shri Menon present in Court today has been asked to take over the charge of the buses from Shri A.C. Khanna. Shri Menon has also been asked to get the three buses mechanically tested and checked up in the presence of the parties. The expenses will be deducted from the income.

This order was made at the instance of Shri A.C. Khanna. It appears that no charge-sheet was ultimately filed against Ranjit Singh and Ors. The appellant, however, obtained a decree of a Civil Court declaring that the appellant was entitled to the buses. The appellant then moved the Judicial Magistrate 1st Class, Amritsar, to

release the vehicles from attachment and hand over possession to them. An order to that effect was made by the learned Magistrate on May 12, 1969. The order was confirmed by the High Court of Punjab and Haryana on November 10, 1970. The appellant then filed another petition before the Magistrate requesting delivery of the vehicles. This petition was opposed by Amin Chand Khanna as well as Anant Menon. Both of them pleaded that they were not liable to restore possession of the vehicles to the appellant. Amin Chand Khanna claimed that he had handed over the buses to Anant Menon while Anant Menon pleaded that Amin Chand Khanna never gave his possession of the buses. He also said Amin Chand Khanna appeared to have given the buses to Smt. Lajwant Kaur and Sadhu Singh. It appears from the order of the learned Magistrate that he asked the appellants Advocate whether his client was in a position to give information about the whereabouts of the buses. On the inability of the appellant and his Counsel to give information as to the whereabouts of the buses the learned Magistrate dismissed the application referring the appellant to a Civil Court. The learned Additional Sessions' Judge Amritsar and the High Court of Punjab and Haryana confirmed the order of the learned Magistrate. The appellant very rightly complains, that for no fault of his he has been directed to go to a Civil Court notwithstanding the fact that the appellant already has a decree of a Civil Court in his favour and in the very proceedings the Magistrate and the High Court had earlier directed that possession of the vehicles should be given to him. The Court had taken custody of the vehicles and it was the duty of the Court to enquire and determine as to what had happened to the vehicles and what should be done to restore the property to the appellant. The learned Counsel for the appellant relied upon a decision of this Court in *Smt. Basava Kom Dyamogouda Patil v. State of Mysore and Anr.* AIR 1977 58. In that case stolen property which was recovered by the Police was, under the direction of the Magistrate, handed over to the Sub Inspector for safe custody. When ultimately the property was directed to be brought back to the Court to be delivered to the owner, it was found that the property had disappeared. The Court held that the owner was entitled to receive the cash equivalent of the property lost which was Rs. 10,000/- and directed that the amount should be paid to the owner by the State.

2. In the present case the property undoubtedly was in custody. The Court had directed Shri Amin Chand Khanna Official Receiver and, later, Shri Anant Menon, his successor, to take charge of the buses. When the rightful claimant applied to the Court for possession of the buses the Court could not simply shrug its shoulders and direct him to go to a Civil Court because both the Official Receivers disclaimed that they were in possession of the buses. In such a situation it was the duty of the Court to probe into the matter, make a full enquiry, and trace the whereabouts of the buses. If the buses could not be so traced or if the buses could not be delivered to the owner for any reason the duty of the Court would be to direct the culpable party to pay the value of the vehicles to the appellant. It is elementary that no one shall be prejudiced for the acts of the Court '*actus curiae Neminem Gravabit*' (the act of the Court harms no one). The orders of the subordinate Courts are therefore, set aside and the matter is remitted to the learned Judicial Magistrate 1st Class, Amritsar, who is directed to dispose of the same in accordance with the law after making full enquiry as suggested by

us.