

Abdul Rahim vs State Through Salik Ram on 11 November, 1955

Equivalent citations: AIR1956ALL319, 1956CRILJ269, AIR 1956 ALLAHABAD 319

ORDER

Kidwai, J.

1. One Abdur Rahim who was working as Station Master was prosecuted under Section 161 of the Penal Code for having accepted a bribe of Rs. 600/- from Mahabir and Thagram. The case was tried by a Special Magistrate of the first class of Lucknow and ended in the acquittal of Abdur Rahim. Abdur Rahim then applied for restoration of Rs. 600/- which had been taken from him by the police. The learned Magistrate by his order dated 11-4-1953, rejected the application of Abdur Rahim for return of the money.

2. The matter was taken up in appeal and the learned Sessions Judge dismissed the appeal. Abdur Rahim then came in revision to this Court and his revision application was allowed by my learned brother Hari Shankar, J. by his order dated 8-12-1954. My learned brother, however, failed to hear the complainant opposite party, viz., Salik Ram and consequently an application was made under Section 561A, Criminal P. C. for set-

ting aside the order passed and for a re-hearing of the revision application.

This application was allowed by my learned brother who set aside his previous order and directed that the revision application be restored and be heard by some other Judge. It is in pursuance of this order that the matter came before me and it has been argued before me independently of the judgment of my learned brother.

3. The only point which now arises is whether Section 517, Criminal P. C. justifies the return of the money to Abdur Rahim or whether it should be given to Salik Ram. Section 517 (1) reads as follows :

"When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or other wise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which, has been used for the commission of any offence".

It will be seen from the above quotation that what the Court has to determine is as to which person is entitled to possession of the property. It is not for the criminal court to determine title to the property. In the present case, it is not disputed that the currency notes were recovered from the possession of Abdur Rahim. It is further not denied that the charge against Abdur Rahim under Section 161, I. P. C. was held not proved, The learned Magistrate, who was the same Magistrate who acquitted Abdur Rahim, states in his judgment that in his order of acquittal he had held:

"It is also true that in my judgment I have remarked that on this point the accused has examined himself and D. Ws. 3, 4 and 6. Since the prosecution evidence is vague and discrepant, there is no reason why the defence version should be rejected. At any rate, the alleged admission does not stand proved".

Thus apart from the acquittal of Abdur Rahim the learned Magistrate trying the criminal case further held that the defence was not disproved.

4. The defence was that the notes for Rs. 600/- which were recovered from Abdur Rahim, had been given to Abdur Rahim in exchange for six notes of Rs. 100/- each which Abdur Rahim had given at Salik Ram's request because he wanted notes of a higher denomination in order to facilitate carrying them.

5. As was remarked by the learned Sessions Judge in the present proceedings when the accused was acquitted his possession of the notes must be deemed to be lawful. If he was in lawful possession of the notes it will be his possession that will be restored. It is true that the accused stated in the criminal trial that the notes had originally been given to him by the complainant but he also stated that he had given him six notes of Rs. 100/- each in exchange.

From the quotation which I have given above the Magistrate found that this plea of the accused was not disproved by the prosecution. There does not seem to be any justification therefore, for the learned Magistrate to hold that in these circumstances also it was for the accused to establish in the present case that his possession of the notes was lawful.

6. The learned Sessions Judge has further remarked :

"Undoubtedly it is the normal procedure in cases of this nature to restore the property to the person from whose possession it was taken."

There is no reason to depart from this procedure and since the possession of Abdur Rahim of this property was not unlawful he was the person to whom possession should have been restored.

7. It was contended by the learned counsel for the complainant that, in any case, this is a revision application and this Court should not exercise its discretion to set aside the eminently Just order of the two Courts below. This argument would have had great force but for the fact that both the courts below have not approached the matter from the correct angle.

The question that has to be determined under Section 517, Cr. P. C. is the question of possession and not of title. The courts below have directed themselves to a determination of the question of the ownership of the notes. This is not the function of a criminal court and therefore the approach of the courts below to this case was not proper.

8. This application must therefore be allowed and I allow it and direct that the sum of Rs. 600/- shall be returned to Abdur Rahim. It must be clearly understood that this order does not determine the question of ownership of the notes for Rs. 600/- which I have ordered to be delivered to Abdur Rahim. That is a matter for determination by a competent civil court.

9. The stay order dated 21-12-1954 is vacated.