

Muneshwar Bux Singh vs State Through Raghunandan Prasad on 5 October, 1955

Equivalent citations: AIR1956ALL199, 1956CRILJ363, AIR 1956 ALLAHABAD 199

ORDER

1. Applicant Muneshwar Bux Singh lodged a report against his brother-in-law Raghunandan Prasad, who is the opposite party in this case, that a motor lorry registered as UPJ 156 which belonged to him has been stolen by Raghunandan Prasad. The police investigated this report and seized this motor lorry from the possession) of Raghunandan Prasad.

While investigating the case it found that the dispute between Muneshwar Bux Singh and Raghunandan Prasad was of a civil nature and, therefore, a final report was submitted in this case and no prosecution was launched.

2. On the directions of the Superintendent of Police the recovered lorry was produced before Sri K. M. Ray, a Magistrate, presumably for a proper order to be passed under Section 523, Criminal P. C. Raghunandan Prasad applied to the Magistrate that the lorry should be returned to him. This application was filed by him on 18-7-1951 and the Magistrate asked for a report from the police.

The police reported that the lorry may be returned to Raghunandan Prasad on his furnishing proper security. The learned Magistrate thereupon released the lorry in favour of Raghunandan Prasad on 19-7-1951, on his furnishing the:

security demanded from him. This order dated 19- 7-1951 shall be referred by us as Order I in the rest of this decision.

3. Four days later on 23-7-1951, Muneshwar Bux Singh filed an application before Sri K. M. Ray alleging that although a final report has been submitted in this case, the applicant can produce satisfactory evidence about his ownership of the lorry and, therefore, the order of release passed in favour of Raghunandan Prasad may be withdrawn and the police may be asked to reconsider the case in the light of the evidence which was in his possession. Nest day, that is on 24-7-1951, Sri K. M. Ray passed the following order on this application:--

"S. O. Kotwali please make a further inquiry and report if evidence of ownership is available as stated by the applicant. My previous order for release of the truck may be held in abeyance."

The police thereupon submitted a report on 30-7-1951 and this time it recommended that the lorry should be given back to Muneshwar Bux Singh. The learned Magistrate thereupon on 31-7-1951, ordered that this lorry should be handed? over to Muneshwar Bux Singh. We will refer to this order

as IInd order in the rest of this decision. This time no security was taken from Muneshwar Bux Singh.

4. When Raghunandan Prasad came to know about this IInd order, he moved an application on 1-8-1951 praying that as the lorry was recovered from his possession, it should be handed back to him. It seems, that Sri K. M. Ray functioned as a Magistrate of this sub-division only upto 31-7-1951, and Sri Ain-ul Abdin was the Magistrate before whom the second application filed by Raghunandan Prasad was presented.

On that very date Ain-ul Abdin passed an order on this application expressing his inability to revise an order passed by Sri. K. M. Ray. On the next day, that is 2-8-1951, Sri Ain-ul Abdin changed his mind and revising his earlier decision passed an order that this lorry should be returned to Raghunandan Prasad from whose possession it was recovered. We will refer to this order of 2-3-1951 as the IIIrd order in the rest of this decision.

5. Muneshwar Bux Singh went up to the Sessions Judge against the IIIrd order, but the Sessions Judge upheld and maintained this order passed by Sri Ain-ul Abdin. Later on it was found that the lorry was sold by Muneshwar Bux Singh on 1-8-4951, when it was handed over to him in compliance with the IInd order. A fresh application was presented before Sri Ain-ul Abdin & a fresh order was passed by him on 23-4-1953 directing that Muneshwar Bux Singh should pay the price of the lorry to Raghunandan Prasad at the valuation given by him in his report.

We will refer to this order as IVth order in the rest of this decision. Muneshwar Bux Singh went up in revision against the IVth order, but the learned Sessions Judge dismissed his revision and maintained the order of the Magistrate. Muneshwar Bux Singh thereupon came up in revision before this Court. This revision was heard by a Single Judge and he has referred it to a Bench.

6. The first question for decision is as to which of these four orders is a legal and valid order. In order to reply to this question we have first to determine under which provision of the law these orders were passed. The learned Magistrates when they passed these orders did not mention any section of the Criminal Procedure Code under which they purported to act. Still from the history of the case given above it is clearly established that this motor lorry was recovered by the police under the provisions of Section 550, Criminal P.C. Section 550, Criminal P. C. reads as follows:--

"Any police officer may seize any property which may be alleged or suspected to have been stolen."

As this lorry was recovered on a report filed by Muneshwar Bux Singh against Raghunandan Prasad under Section 379, Penal Code, it is clear that this lorry was alleged to be stolen property. It is also clear that no inquiry or trial was held by the Magistrate in respect of the theft of this lorry. The orders passed by the Magistrates, therefore, could not have been passed under Section 516A or Section 517, Criminal P. C. As a matter of fact the police reported that the dispute between the parties was of a Civil nature and, therefore, it can safely be accepted that the possession of Raghunandan Prasad over this lorry was not the result of any offence. We are, therefore, of the

opinion that these orders passed by the Magistrates were passed under Section 523 Criminal P. C. Section 523, Criminal P. C. runs as follows:

"(1) The seizure by any police officer of property taken under Section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown; the Magistrate may detain it and shall, in such a case issue a proclamation specifying the article of which such property consists and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation'."

We have, therefore, to see whether the 1st order passed in this case was an order under Section 523, Criminal P. C. or not and whether it could be altered subsequently.

7. The counsel for Muneshwar Bux Singh contended that the 1st order was not a final order, but merely an interim order & the 2nd order was really the final order. We have carefully looked into the provisions of Section 523, Cri. P. C. and we find that there is no provision for passing an interim order. The mere fact that security was demanded from Raghunandan Prasad when the lorry was handed over to him would not make the 1st order an interim order.

As a matter of fact the words of Sub-section(2) of Section 523 themselves contemplate that property can be delivered to a person who is entitled to it on conditions. The relevant part of Sub-section(2) reads as follows:

"If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. ,,,.,.,."

We are, therefore, satisfied that the demanding of the security from Raghunandan Prasad did not in any way make the 1st order, an interim order. In our opinion the 1st order was a proper and legal order passed under Section 523 Criminal P. C. Such an order cannot be reviewed. It is open to the aggrieved party to seek redress in a higher Court, but the Magistrate after passing this order became *functus officio* and he could not revise his own order. A similar situation arose in a case which was decided by the Lahore High Court,--'Ghulam Ali v. Emperor', AIR 1945 Lah 47 (A) in which Blacker J. observed:

"The Magistrate had already passed an order which must be presumed to have been under section (Section 523, Criminal P. C.) when he directed the property to be made

over to the petitioner on security. His second order, therefore, amounts to a review of this first order and a criminal Court cannot review its own judgment."

We are in entire agreement with the view expressed above and in our opinion all the proceedings in this case subsequent to the passing of the 1st order were bad in law and must be set aside.

8. It was, however, contended by the counsel for the applicant that Section 523, Criminal P. C. gives a discretion to the Magistrate to hold an inquiry regarding the entitlement to the possession of property and, therefore, it is open to the Court to pass an interim order before it finally completes its enquiry. It was argued that a Magistrate can enquire and pass an order in favour of person from whose possession the property was not recovered. Reliance was placed on the following decisions:

'Queen Empress v. Joti Rajnak', 8 Bom 338 (B), -- 'Subbaramma Ayyer v. Damodaram', AIR 5937 Mad 313 (C). -- 'Tikka Reddi v. Kondalu Rami Reddi', AIR 1941 Mad 416 (D), -- 'A. K. A. R. A. Chettyar v. Ma Saw Hia', AIR 1937 Rang 460 (E).

The cases of -- 'Tikka Reddi', (D) and A. K. A. R. A. Chettyar (E) can easily be distinguished, because in those cases the Court found that the possession of the persons was either unlawful or dishonest. The view taken in the other two cases does not seem correct to us and with great respect for the learned Judges who decided those cases we dissent from that view. In our opinion where property is recovered from the possession of a person, a court for the purpose of an order under Section 523 must hold that he is entitled to its possession.

We can visualize only three instances in which the property recovered from the possession of a person may be handed over to some other person. These three Instances are:

1. When the person from whose possession the property is recovered denies that it was recovered from his possession. Such a situation might arise in those cases where some stolen property is recovered from the possession of a person and the plea of the person from whose possession it is recovered is that it was planted. In such a case even though no inquiry or trial be held by a criminal Court, a Court acting under Section 523 Criminal P. C. can hand over this property to some person whose entitlement to possession is satisfactorily established after inquiry.
2. Where the property is recovered from the possession of a person, but this possession has been acquired either in a dishonest or unlawful manner.
3. Where the person from whose possession the property is seized alleges that he is only in temporary custody of this property and it belongs to someone else.

The instances given by us may not be exhaustive and it is possible that in the peculiar circumstances of a case an inquiry might be permissible but in our opinion it is only in such and similar

circumstances that a Magistrate is given a discretion to hold an inquiry. In other cases the Magistrate should not conduct an inquiry. In this particular case the order of the Magistrate before passing the IInd order shows that he wanted to investigate the evidence about the ownership of this lorry.

It was extremely undesirable and improper to carry on any such investigation. The words of the section are very clear and they specifically mention that the property should be delivered to a person who is entitled to its possession and not to a person who owns it. In our opinion where a person is found in possession and it cannot be alleged that he has secured this possession either in an unlawful or a dishonest manner, the Court has no other option but to hand over the property to him.

The Magistrate in this case clearly went beyond his powers when he tried to investigate the title of the property in dispute. We are supported in this view by several decisions. These decisions are:

-- 'Purshottam Das Banarasidas v. State', AIR 1952 All 470 (F); 'Lakehmi Chand Rajmal v. Gopikisan Balmukund', AIR 1936 Bom 171 (G); 'Sattar Ali v. Afzal Mahomed', AIR 1927 Cal 532 (H); 'In re, Kuppummall', 4 Cri LJ 233 (Mad) (I); 'U Ba-Hiaing v. Balabux Sodani', AIR 1937 Rang 42 (J); 'Karuppanan Ambalam v. Guruswami Pillai', AIR 1933 Mad 434 (2) (K).

9. In 'AIR 1936 Bom 171 (G)', Beaumont, C. J. observed as follows:

"Under Section 523 what the Magistrate has to consider is who is entitled to the possession of property which has been seized by the police. Where it is proved that the person from whose possession the property was seized came by it dishonestly, the Magistrate may have to consider questions of title in order to determine the best right to possession. But where it appears that the police have seized property from a person who is not shown to have committed any offence in relation to that property, then in my opinion the Magistrate can only hold that that person is entitled to possession of the property."

10. We are, therefore, of the opinion that the IInd order passed by Sri K. M. Ray was not only without jurisdiction but he even exceeded his powers as a Magistrate when he started an inquiry about the ownership of the disputed lorry.

11. Another circumstance which shows that Sri K. M. Ray absolutely lost his judicial balance is that he acted on the report of the police alone and set aside his first order behind the back of Raghunandan Prasad. He, therefore, conducted no inquiry at all, but accepted the report submitted by the police. Section 523, Criminal P. C., does not contemplate that even in those cases where the Magistrate conducts an inquiry, this inquiry should be delegated to the police officers and the Magistrate should merely act as their tool in endorsing their recommendations. We are, therefore, of the opinion that the IInd order was absolutely illegal.

12. The IIIrd order can be completely ignored from consideration because it merely confirms the 1st order which we have held to be the only legal and proper order.

13. We have, therefore, now to consider whether the relief given to Raghunandan Prasad by the IV order is maintainable or not. We have held above that the only section under which the Magistrate could pass an order in this case was Section 523, Criminal Procedure Code. Under Section 523, Criminal Procedure Code there is no provision that any property into which a property has been converted can also be given back to the person in whose favour the original order was passed.

The Magistrate and the learned Sessions Judge seem to be of the opinion that the explanation included in Section 517 Criminal P. C. also applies to an order passed under Section 523, Criminal P. C. The explanation to Section 517, Criminal P. C. runs as follows:

"Explanation: In this section the term 'property' includes in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

The very fact that this explanation was not included in Section 523, Criminal P. C. is a clear indication that such a relief cannot be given when an order is passed under Section 523, Criminal P. C. It is not difficult to understand the reason for this difference. When an order is passed under S, 517, Criminal P. C., a Court after dealing with the case comes to certain conclusions as to which person is entitled to the property.

Under Section 523, Criminal P. C. an order is passed on the materials available to the Magistrate and no real inquiry is made. The Court when acting under Section 517, Criminal P. C. can feel almost sure as to who is the person to whom the property belongs on its own findings. But no such inference can be drawn when property is disposed of under Section 523, Criminal P. C. That is the reason why greater powers are given to Courts under Section 517, Criminal P. C. than under Section 523, Criminal P. C. A Magistrate cannot assume powers under Section 523, Criminal P. C. by relying upon a provision made in Section 517, Criminal P. C. We are, therefore, of the opinion that the IVth order by which the Magistrate ordered that the price of the lorry should be paid to Raghunandan Prasad was an order which cannot be upheld, under the provisions of Section 523, Criminal P. C.

14. A question, however, arises that where an injustice has clearly been committed through an illegal order passed by a Court, is it not open to this Court in the exercise of its inherent powers to set right the wrong and grant relief to the person who has been prejudiced? The only section which confers such powers on this Court is Section 561A, Criminal P. C. On the facts of the case it is clearly made out that Sri K. M. Ray by his perverse order committed a grave injustice and Raghunandan Prasad suffered on account of that perverse order.

Can we in the interest of securing the ends of Justice at this stage pass an order which would give relief to Raghunandan Prasad by ordering Muneshwar Bux Singh to pay him the price of the lorry? We have very anxiously considered this aspect of the case, but in our opinion we would not be justified in passing such an order. If the motor lorry had not been sold to a third person, we would have certainly ordered its restoration to Raghunandan Prasad. But this sale has complicated matters and the rights of a 'bona fide' purchaser have also to be considered.

There is no allegation or evidence that the person who has purchased this lorry is not a 'bona fide' purchaser. It is no longer an issue between Muneshwar Bakhsh Singh and Raghunandan Prasad alone but a third party has also become interested in it. In the exercise of our inherent powers under this section we have to guard against passing an order which would conflict with the provisions of the Cr. P. Code. A relief howsoever equitable cannot be granted by exercising our inherent powers in contravention of law.

We have already observed above that Section 523, Criminal P. C. does not contemplate the restoration of that property into which a property has been converted. We cannot enlarge the scope of Section 523, Criminal P. C. by using our, inherent powers and by passing an order which cannot be passed under that section. Even under Section 517, Criminal P. C. we could not have given this relief to Raghunandan Prasad, because the lorry was already sold to a third party. In the case of -- 'Bishambhar Rai v. State', AIR 1953 All 199 (L), a learned Judge of this Court observed:

"Section 517 presupposes the existence of the property either in the custody of the Court or in the possession of any party to the litigation or supurdar or any other person who is amenable to the jurisdiction of the Court. But if the property has been disposed of and is no longer available to Court and if its money value is also not in the custody of the Court or supurdar no order about the payment of money can be passed under the explanation to the section. In such a case it is for the aggrieved party to seek his redress through the civil Court".

We find ourselves in agreement with the view expressed above and under the circumstances we feel that we cannot pass any order under Section 561A, Criminal P. C., which would give relief to Raghunandan Prasad. We therefore, find that the IVth order although equitable cannot be upheld in law.

15. We allow this application of revision and set aside the IVth order passed by Sri Ain-ul -

Abdin by which he directed that the price of the lorry as mentioned in the first information report should be paid to Raghunandan Prasad by Muneshwar Bakhsh Singh.