State Bank Of India vs Rajendra Kumar Singh & Ors on 25 September, 1968

Equivalent citations: 1969 AIR 401, 1969 SCR (2) 216, AIR 1969 SUPREME COURT 401, 1969 ALL. L. J. 389, (1969) 1 S C J 822, 1969 MADLJ(CRI) 442, (1968) 2 SCWR 461, 1969 JAB L J 419, 1969 B L J R 388, 1969 M P L J 415, 1969 MAH L J 527

Author: V. Ramaswami

Bench: V. Ramaswami, J.C. Shah, A.N. Grover

PETITIONER:
STATE BANK OF INDIA

Vs.

RESPONDENT:
RAJENDRA KUMAR SINGH & ORS.

DATE OF JUDGMENT:
25/09/1968

BENCH:
RAMASWAMI, V.
BENCH:
RAMASWAMI, V.
SHAH, J.C.
GROVER, A.N.

CITATION:
1969 AIR 401 1969 SCR (2) 216

ACT:
Code of Criminal Procedure, 1898, Ss. 517 and 520--Order of the Court directing return of seized property--If necessary to give party adversely affected notice of hearing and opportunity to be heard--who has 'right to possess' within the meaning of s. 517.

HEADNOTE:
21 currency notes of Rs. 1,00.0 each were seized from the Appellant Bank by the police in the course of an investigation of a case against the third respondent of cheating the first and second respondents. The seized currency notes were said to be part of the property obtained

by the third respondent from the other two respondents. The third respondent was acquitted by the trial court of the offence charged. In the course of the trial the appellant made an application under section 517(1) of the Code of Criminal Procedure asking for the delivery of the currency notes to it on the ground that the appellant was an innocent third party who had received the said notes without any knowledge or suspicion of their having been involved in the commission of an offence. By its order of 24th April 1962, the trial court allowed the application and directed that the currency notes 'should be returned to the appellant. Subseqently an appeal filed by the State was allowed by the High Court which set aside the trial court's order of acquittal of the third respondent and convicted him of the offence charged. On an application made by the first respondent asking for delivery of the currency notes to him as they belonged to. him and the second respondent, the High Court, by an order of April 5, 1963 directed that the notes be handed over to the first and second respondents.

In the appeal to this Court, it was contended, inter alia, on behalf of the appellant that the High Court had reversed the order of the trial court directing the return of the currency notes to the appellant without giving a notice to the appellant. and without giving an opportunity of being heard; and that the order of April 5, 1963 was therefore violative of the principles of natural justice and was illegal. The contention on behalf of the respondents was that there was no provision in section 520 of the Code of Criminal Procedure for giving notice to the affected parties and the order of the High Court could not be challenged on the ground that no hearing was given to the appellant. It was also contended that the High Court had a discretion under the statute as to whom. the property was to be returned and there was no reason why this Court should interfere with the exercise of discretion by the High Court.

HELD: The appeal must be allowed and the order of the High Court dated April 5, 1963 set 'aside. The seized currency notes must be directed to be returned to, the appellant.

(1) It is mainfest that the High Court was bound to. give notice to the 'appellant before reversing the order of the trial court directing the disposal of the property under s. 517 of the Code of Criminal Procedure. As no such notice was given to the appellant, the order of the High Court dated 5th April 1963 is vitiated in law. Although the statute does not expressly require a notice to be issued, or a hearing to be given to the

217

parties adversely affected. there is in the eye of law a necessary implication that the parties adversely affected should be heard before the Court makes an order for return of the seized property. [220 C-D, 221 E]

Cooper v. Wandsworth Board of Works. (1863) 14

C.B.N.S. 180, Ridge v. Baldwin, (1963) 2 W.L.R. 935 and Board of High School and Intermediate Education, U.P. Allahabad v. Ghanshyam Das Gupta and Ors, A.I.R. 1962 S.C. 1110, referred to.

(2) The appellant asserted that it had obtained the currency notes in the normal course of its business and without any knowledge or suspecion of their having been involved in the commission of any offence and that the respondents had not alleged fraud or lack of good faith on the part of the appellant. In the circumstances the High Court should have directed the return of the currency notes to the appellant which had the "right to possess" the notes within the language of s. 517 of the Code of Criminal Procedure. Property in coins and currency notes passes by mere delivery and it is the clearest exception-to the rule Nemo dat quod non habet. [222 B. C]

Whistler v. Forster, (1863) 14 C.B.N.S. 257-258, referred to.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal NO. 32 of 1965.

Appeal by special leave from the ,judgment and order dated April 5, 1963 of the Madhya Pradesh High Court, Indore Bench in Criminal Misc., Case No. 135 of 1962.

Niren De, Solicitor-General, H.L. Anand, 1. M. Bhardwaj and K.B. Mehta, for the appellant.

B.C. Mishra and C.P. Lal, for respondents Nos. 1 and 2. The Judgment of the Court was delivered by Ramaswami, J. This appeal is brought from the order of the High Court of Madhya Pradesh dated 5th April, 1963 in Criminal Miscellaneous Case No. 135 of 1962 under section 520 of the Code of Criminal Procedure directing the return of 21 currency notes of the denomination of Rs. 1,000 each to respondents Rajendra Kumar Singh and Virendra Singh.

The currency notes of the total value of Rs, 21,000 were seized by the Madhya Pradesh Police from the Beawar Branch of the State Bank of India in the course of an investigation of a case under sections 420, 406 and 120B of the Indian Penal Code registered in P.S. Thuko Ganj, Indore City as Crime No. 113 of 1961 against Kishan Gopal, the third respondent. It appears that the third respondent had come into possession of a sum of Rs. 1,50,000 in Government currency notes by cheating the first and second respondents. The currency notes seized from the appellant were said to be part of the property obtained by Kishan Gopal by the commission of the said offence. The case of the appellant was that it had come into possession of the said currency notes in the usual course of its business partly through the Bank of Rajasthan Limited and partly through the Mahalaxmi L2SuP CI 69--15 Mills Company Limited without any knowledge that the said currency notes had been the subject matter of an offence. In the proceedings that followed on the investigation of the said case, the accused persons including the third respondent were acquitted by the Court of the Fourth

Additional Sessions Judge, Indore in Sessions Case No. 3 of 1962 by an order made on 24th April, 1962. In the course of the trial, the appellant made an application under section 517 (1) of the Code of Criminal Procedure asking for delivery of the aforesaid 21 currency notes to it on the ground that the said currency notes had been seized by the police from the appellant and that the appellant was an innocent third party who had received the said notes without any knowledge or suspicion of their having been involved in the commission of an offence. By his order dated 24th April, 1962 the 4th Additional Sessions Judge, Indore allowed the application and directed that the currency notes should be returned to the appellant. Subsequently, an appeal was filed to the High Court by the State of Madhya Pradesh being Criminal Appeal No. 205 of 1962. The appeal was allowed and the High Court set aside the order of acquittal of the third respondent and' convicted him under sections 420, 406 and 120B of the Indian Penal Code and sentenced to undergo imprisonment. The first respondent, Rajendra Kumar Singh, made an application to the High Court asking for delivery of the currency notes as they belonged to him and the second respondent and as they had been deprived of the said property by the third respondent by the commission of the aforesaid offence. The application was allowed by the High Court by its order dated 5th April, 1963 and the currency notes were ordered to be handed over to the first and the second respondents. The relevant portion the order of the High Court reads as follows :--

> "Now the bulk of the recovered property consists of Government currency notes either of the denomination of rupees one thousand each or money obtained after the tender of one thousand rupee notes by Kishan Gopal. The position of the recovered money in short is this :--
>
> 1.37, one thousand rupee notes were recovered from the pillow of accused Kishan Gopal after his arrest amounting to: 37,000
>
> 2. Money directly traceable to one-

thousand rupee notes recovered from Dayabhai P.W.52, with whom it was deposited by accused Kishan Gopal and Mst. Tulsabai. 59,500

3. Money recovered from Mst. Tulsa-

bai the sister of accused's cuncubine 10,000

4. Money in Beawar Bank consisting of two drafts of ten-thousand each; on in the name of accused Kishan Gopal and the other in the name of Rukmanibai, his witness for which the accused ten-

dered twenty one thousand rupee notes and one thousand rupee notes. with which he opened an account with his Bank. 21,000

Total :-- 1,27,500 This amount (Rs. 1,27,500) is directly traceable to the conversion of one thousand rupee notes. We, therefore, direct it be given to Virendra Singh P.W. 1, and Rajendra Kumar P.W. 73, who shall proportionately divide it between themselves. No other order is made in respect of other property and., the parties are left to establish their claim in Civil Court".

Section 517 o.f the Code' of Criminal Procedure states:

> "517. (1) 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 otherwise 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.
>
> (2) When a High Court or a Court of Session makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.

. . . . . .
. . . . . .

Section 520 provides as follows :

> "Any Court of appeal,confirmation, reference or revision may direct any order under section 518, section 518 or section 519 passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and made any further orders that may be just".

In Support of this appeal, it was contended in the first place that the High Court had' reversed the order of the Sessions Judge directing the return of the currency notes without giving a notice to the appellant and without giving an opportunity to it for being heard. The argument was stressed that there was a violation of the principle of natural justice and the order of the High Court dated 5th April, 1963 was illegal. It was, however, contended on behalf of the respondents that there was no provision in section 520 of the Code of Criminal Procedure for giving notice to the affected parties and the order of the High Court cannot be challenged on the ground that no hearing was given to the appellant. In our opinion, there is no warrant or justification for the argument advanced on behalf of the respondents. It is true that the statute does not expressly require a notice to be issued, or a hearing to be given to the parties adversely affected. But though the statute is silent and does not expressly require issue of any notice there is in the eye 'of law a necessary implication that the party adversely affected should be heard before the Court makes an order for return of the seized property. The principle is clearly stated in the leading case of Cooper v. Wandsworth Board of Works(x). In that ease section 76 of the Metropolis Local Amendment Act, 1855 authorised the District Board to demolish the building if it had been constructed by the owner without giving notice to the Board of his intention to build. The statute laid down no procedure for the exercise of the power of demolition, and, therefore, the Board demolished the house in exercise of the above power without issuing a notice to the owner of the house. It was held by the Court of Common Pleas that'

the Board was liable in damages for not having given notice o,f their order before they proceeded to execute it. Erie, C,J. held that the power was subject to a qualification repeatedly recognised that no man is to be deprived of his property without his having an opportunity of being heard and that this had been applied to "many exercises of power which in common understanding would not be at all a more judicial proceeding than would be the act of the district board in ordering a house to be pulled down". Willes, J. said that the rule was "of universal application and rounded upon the plainest principles of justice" and Byles, J. said that "although there are no positive words in a statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature." The same principle has been reaffirmed in a recent case Ridge v. Baldwin(2). In that case, section 191 of the Municipal Corporations Act, 1881 provided that a watch committee may at any time suspend or dismiss any borough constable whom they think negligent in the discharge of his duty, or otherwise unfit for the same. The appellant, who was the chief constable of a (1) (1863) 14 C.B.N.S. 180. (2) (1963) 2 W.L.R. 935.

borough police force, was dismissed by the watch committee on the ground that he was negligent in the discharge of his duties as thief constable. He brought an action against the members of the watch committee by stipulating that his dismissal was illegal and ultra vires the powers. It was held by the House of Lords that the decision of the watch committee was ultra vires because they dismissed the appellant on the ground of neglect of duty and as such they were bound to observe the principles of natural justice by informing him of the charges made against him and giVing him an opportunity of being heard. The same principle was applied by this Court in Board of High School and Intermediate Education. U.P.. Allahabad v. Ghanshvam Day Gupta and Ors. (1). It was held in that case that an examination committee of the Board of Secondary Education in Uttar Pradesh was acting quasi-judicially when exercising its Dower under rule 1 (1) of Chapter VI of the Regulations dealing with cases of examinees using unfair means in examination hall and the principle of natural justice which require that the examinee must be heard. will apply to the proceedings before the Committee. Though there was nothing express one way or the other in the Act or the Regulations casting a duty on the committee to act judicially, where no opportunity whatever was given to the examinee to give an explanation and present their case before the Committee. the Resolution of the committee cancelling their results and depriving them from appearing at the next examination was defective. Applying the Principle to the present case it is manifest that the High Court was bound to give notice to the appellant before reversing the order of the Sessions judge directing the disposal1 of the property under s. 517 of the Code of Criminal Procedure. As no such notice was given to the appellant. the order of the High Court dated 5th April, 1963 is vitiated in law.

The next question which arises in this appeal is whether the High Court was justified on merits in ordering the currency notes to be returned to respondents 1 and 2. It was argued by Mr. Mishra that the High Court hat a discretion under the statute as to whom the property was to be returned and there was no reason why this Court should interfere with such exercise of discretion by the High Court. We are unable to accent the argument. It iS true that sections 517 and 520 of the Code of Criminal Procedure confer a discretion on the High Court as regards the disposal of the property seized or produced before it or regarding which any offence was said to have been committed. But as we shall presently show the High Court has not exercised its discretion according to proper legal principle and its order is hence liable to be set aside. It was stated by Mr. Mishra that the question

involved in (1) A.I.R. 1962 S.C. 1110 this case is whether as to which out of two innocent parties should suffer, viz.; the person who lost the property due to the criminal, act of another or the person to whom the property (currency notes) had been delivered in the normal course of its business. It is not, however, correct to say that respondents 1 and 2 are equally innocent because respondents 1 and 2 had admittedly handed over the currency notes to respondent No. 3 "for the criminal purpose of duplication". It was indeed urged on behalf of the appellant that respondents 1 and2 had entered into a criminal conspiracy with respondent No. 3 for 'duplicating' the currency notes. In any event, we are satisfied that the High Court was in error in directing the return of the currency notes to respondents 1 and 2. The reason is that the property in coins and currency notes passes by mere delivery and it is the clearest exception to the rule Nemo dat quod non habat. This exception was engrafted in the interest of commercial necessity. But the exception only applies if the transferee of the coin. or currency notes takes in good faith for value and without notice of a defect in the title of the transferor.The rule is stated by Wills J. in Whistler v. Forster(1) as follows :-

> "The general rule of law is undoubted, that no one can transfer a better title than he himself possesses: Nemo dat quod non habat. To this there ,are some exceptions; one of which arises out of the rule of the law merchant as to negotiable instruments. These, being part of the currency, are subject to. the same rule as money: and if such an instrument be transferred in good faith, for value, before it is overdue, it becomes available in the hands of the holder, notwithstanding fraud which would render it unavailable in the hands of a previous holder."

In the present case the appellant asserted that it had obtained'the currency notes in the normal course of its business and without any knowledge or suspicion of their having been involved in the commission of any offence. The respondents have not alleged fraud or lack of good faith on the part of the appellant. The appellant hence contended that the property in the currency notes, passed in its favour by mere delivery and the appellant "had a right to possess' the currency notes within the meaning of s. 517 of the Code of Criminal Procedure. We do not wish to express any concluded opinion in this case on the ultimate question of liability for payment of the money as between the appellant on the one hand and respondents 1 and 2 on the other. But we are of opinion that in the circumstances of this case the High Court should have directed the return of the said currency notes to the (1) (1863) 14 C.B.N.S. 257-258.

appellant which had the "right to possess" the currency notes within the language of s. 517 of the Code of Criminal Procedure.

we accordingly allow this appeal, set aside the order of the High Court dated April 5, 1963 and direct that the 21 currency notes of the denomination of Rs. 1000 each seized by the Madhya Pradesh Police should be returned to the appellant.

R.K.P.S. Appeal allowed.