Smt. Basavva Kom Dyamangouda Patil

Vs.

State of Mysore and Another

Criminal Appeal No. 243 of 1971

(R. S. Sarkaria, Jaswant Singh JJ)

19.04.1977

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave raises a short point of law regarding the powers of the Court in indemnifying the owner of the property which is destroyed or lost whilst in custody of the Court.

2. It appears that a theft took place in the house of the complainant/appellant on the night of November 28/29, 1958 in the course of which a large number of ornaments and cash, etc. were stolen from the possession of the complainant/appellant. On February 8, 1959 a number of stolen articles were recovered from accused 1 to 5 and various panchnamas evidencing recovery of those articles were prepared. On February 10, 1959 the articles seized by the police from the possession of the accused were identified by the complainant as a test identification parade and ultimately a charge-sheet was submitted against the five accused on February 20, 1959. The articles were produced before the Court of the Chief Judicial Magistrate who directed the police officer concerned to retain the articles in his custody until the same were verified and their value was determined by a goldsmith. The Court moved the higher authorities for obtaining sanction of the necessary funds for payment of the fees of the goldsmith. Thereafter the articles were kept by the Sub-Inspector, Haveri in the Guard Room of the police station in a trunk with a list of the articles and a corresponding entry in the concerned Register. Towards the end of the year the Sub-Inspector was transferred and his successor took charge of the post of Sub-Inspector, Haveri, and also verified the articles kept in the trunk on December 23, 1959. It is not disputed that the new Sub-Inspector, after taking charge, found the articles in the trunk intact. The Sub-Inspector, however, proceeded on leave on December 31, 1961 for a period of 9 days ending January 8, 1961. After the Sub-Inspector returned from leave he was directed by the Court to produce the articles kept in the custody of the police under the orders of the Court. Thereupon the Sub-Inspector opened the trunk on January 17, 1961 and to his utter dismay found that the trunk contained only stones and no articles all of which had disappeared. The Sub-Inspector immediately filed a complaint of a theft of the ornaments being Crime No. 2 of 1964 and which is Ext. 34 appearing at pp. 182-191. In this complaint the value of the property is shown as Rs. 10,050/2/- which may be rounded off to Rs. 10,000. As the accused were not traceable a summary final report was submitted. The original charge-sheet submitted by the police against the five accused proceeded to its logical end resulting in conviction of the accused by the Trial Magistrate and an unsuccessful appeal to the Sessions Judge, Dharwar. The High Court in revision, however, acquitted the accused on technical grounds. After the conclusion of the trial, the complainant filed an application before the Trial Magistrate for return of the stolen articles, or in absence of the same for payment of the equivalent value thereof. This application was rejected by the Magistrate on the ground that as the articles never reached the custody of the Court, the

complainant was not entitled to their restoration. The complainant then filed an appeal before the Sessions Judge, Dharwar, which also met with a similar fate. Thereafter the complainant went up in revision to the High Court of Mysore which was also dismissed by the High Court mainly on the ground that as the articles had not been placed in the custody of the Court, provisions of the Code of Criminal Procedure, 1898 - hereinafter referred to as 'the Code' - had no application. The appellant prayed for leave to appeal to the Supreme Court against the order of the High Court, which having been refused, the appellant obtained special leave from this Court, and hence this appeal.

3. In support of the appeal Mr. Gupte submitted a short point before us. It was contended that the High Court was in error in holding that the articles were not physically produced before the Court and did not therefore come into its custody. Secondly, it was submitted that even if the articles were not available, the Court had ample power to order payment of the cash equivalent of the articles lost. Mr. Nettar for the respondents supported the judgment of the High Court on the ground that the properties not being custodia legis, no relief could be given to the appellant.

4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.

5. Coming now to the decision of the High Court that the articles in question were never actually produced by the police before the Court, we find that this is factually incorrect. It appears from the finding of the High Court that immediately after the articles were recovered by the police and the police submitted a charge-sheet to the Chief Judicial Magistrate, it produced the articles before the Court, but the Court directed the Sub-Inspector to retain the property until the same is verified and valued by a goldsmith for which the Court moved the higher authorities for sanction of necessary funds. The Sub-Inspector was also directed to bring the goldsmith. In these circumstances, the Sub-Inspector took back the articles and kept them in the Guard Room of the police station. It would thus appear that the articles were actually produced before the Court but were retained by the Sub-Inspector under the directions of the Court. A production before the Court does not mean physical custody or possession by the Court, but includes even control exercised by the Court by passing an order regarding the custody of the articles. In the instant case when once the Magistrate, after having been informed that the articles were produced before the Court, directed the Sub-Inspector to keep them with him in safe custody, to get them verified and valued by a goldsmith, the articles were undoubtedly produced before the Court and became custodia legis.

6. It is common ground that these articles belonged to the complainant/appellant and had been stolen from her house. It is, therefore, clear that the articles were the subject-matter of an offence. This fact, therefore, is sufficient to clothe the Magistrate with the power to pass an order for return of the property. Where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so require, order payment of the value of the property. We do not agree with the view of the High Court that once the articles are not available with the Court, the Court has no power to do anything in the matter and is utterly helpless.

7. In the instant case it is clear that the value of the property stolen is easily ascertainable on the materials on the record and does not admit of any difficulty. It is true that in the complaint Ext. 9 the total value given by the appellant comes to Rs. 13,320. But this cannot be a correct criterion because the Court has to calculate the value of only that property which has been recovered from the accused and seized by the police. It may be that some property may not have been recovered at all. The correct principle, therefore, to apply in this case would be to find out if there is any material to show the value of the articles actually seized by the police from the possession of the accused. It would appear from Ext. 1 the charge-sheet that the total value of the articles which were recovered from the five accused comes to Rs. 10,049, which may be rounded off to Rs. 10,000. Exhibit 34 which is the report lodged by the police regarding the property having been stolen also shows the value of the property kept in the trunk to be Rs. 10,050. This will appear from Ext. 34 which gives a detailed and exhaustive list of the articles kept in the trunk and the value thereof. In these circumstances, therefore, it can be safely held that the value of the property recovered from the possession of the five accused and stolen from the house of the complainant was Rs. 10,000. It is also clear that in the instant case, no plea had been taken by the State that the property was lost in spite of due care and caution having been taken by it or due to circumstances beyond its control. On the other hand, while all the articles were stolen from the trunk kept in the Guard Room of the police station, except the formality of a report having been lodged, no action seems to have been taken by the State against the Sub-Inspector or the officers who were responsible for the loss of the property, even to this date. In these circumstances, therefore, the State cannot be allowed to successfully resist the application filed by the appellant. The appellant is entitled to receive the cash equivalent of the property lost which has been held by us to Rs. 10,000 and this amount should be paid to the complainant by the State.

8. The appeal is accordingly allowed, the orders of the High Court as also of the two Courts below are hereby set aside and the State is directed to pay a sum of Rs. 10,000 to the complainant/appellant. In the circumstances of the case, the appellant shall be entitled to costs throughout from the respondent.

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