

MYSORE HIGH COURT

Basavva Kom Dyamangouda Patil

Vs

State of Mysore

Criminal Revn. Petn. No. 388 of 1968

(C. Honniah, J.)

06.07.1969. 17.07.1970

JUDGMENT

T.C. Raghavan J.

1. This is an application in revision by one Basavva Kom Dyamangouda Patil against the order dated 6.7.1968, by which the first Additional Sessions Judge, at Dharwar dismissed the petition filed by Bassavva under Sections 517 and 520, Criminal Procedure Code, holding that the property claimed by her was neither produced before the Court nor was it in the custody of the trial Court at the time of passing the order.

2. The relevant facts are that the petitioner gave first information report to the Police of Haveri in Dharwar District alleging that on the night of 28th November 1958 some persons entered her house, broke open the doors and committed theft of valuable articles consisting of gold ornaments of considerable value and also cash. The police recovered the gold ornaments and cash on the information furnished by five persons, on various dates. The details of the articles were noted down in the panchanamas. After investigation, the Police charge-sheeted five persons alleging that they had committed theft of the gold ornaments and cash seized by them from the house of the petitioner, on the night of 28.11.1958. The investigating officer sent the charge-sheet through the sub-inspector of police, directing him to produce the property before the Court as the property was entrusted to him for safe custody. It appears that the Court directed the sub-inspector to bring a goldsmith so that the property could be received by the Court after verification. As he had not taken the goldsmith, the Sub-Inspector took back the property and kept the same in the guard room of the police station making a note in the property register of the police Station. That Sub-Inspector was transferred from Haveri and another Sub Inspector took charge of the Police Station from him on 23.12.1959. At the time he took charge, he found the properties as mentioned in the property register by the previous Sub-Inspector in tact. That Sub-Inspector went on leave from 31.12.1960 and returned to duty on 9.1.1961. By then the Court had sent a memo calling upon the Police of Haveri to produce the properties attached in the case. The Sub-Inspector found then that the properties that had been kept in the box in the guard room missing. He registered a theft case in respect of those properties and after investigation submitted an 'A' summary. It could be seen from the observation made in the judgement of the Additional

Munsiff and Judicial Magistrate, First Class, Haveri in C.C. No. 358/64, which was the case with reference to those properties, that though the charge sheet was presented to Court on 20.2.1959, the properties remained with the Police till they were lost from the guard room. On conclusion of the trial, the learned Magistrate found A-1 to A-4 guilty under Section 411, Indian Penal Code and acquitted A-5. In regard to the properties, this is what he stated in his judgment :

"There will be no order as to the disposal of the property as no property is before Court even though it is proved that the properties from the possession of the complainant had been stolen. Besides 'A' summary has been sought and granted in Crime No. 2/61 where the very properties of this case were concerned."

One of the convicted persons (A-3) preferred an appeal in the Court of the Sessions Judge at Dharwar against his conviction. The Additional Sessions Judge, who heard the appeal, dismissed the appeal. The other convicted persons, it appears, did not prefer any appeal. The third accused, aggrieved by the decision of the Additional Sessions Judge, Dharwar, filed a revision petition before this Court, challenging the conviction made against him by the Magistrate and confirmed by the Sessions Judge. This Court set aside the conviction and acquitted him by its order dated 24.11.1966.

3. Thereafter, the petitioner filed an application under Sections 517 and 520, Criminal Procedure Code before the Sessions Judge at Dharwar praying that the Court may dispose of the articles stolen from her house and attached by the Police during the course of investigation by directing the State of Mysore or the concerned party to restore the said stolen ornaments to the petitioner or to give equivalent price of about Rs. 16,000. The petitioner gave the description of the stolen gold ornaments as shown in the various panchanamas under which they came to be attached from the accused persons.

4. The learned Sessions Judge dismissed the petition holding as follows :

"The stolen properties of the petitioner were not in the custody of the trial Court when the trial Court disposed of the criminal case. The stolen articles were not produced before the trial Court. The Court cannot pass an order under Section 517, Criminal Procedure Code when the property is neither produced before it nor is in its custody at the time of passing an order of disposal in respect of such property."

5. In this revision petition Mr. Javali, the learned counsel for the petitioner, contended that the properties attached by the police under various panchanamas were identified by the petitioner and her witnesses as properties belonging to the petitioner that were stolen from her house on the night of 28.11.1958; the properties were produced before the Court when the charge sheet was filed but under the direction of the Court the properties were taken back by the Police as the Court wanted to take the properties to its custody after verification by a goldsmith, and therefore he contended that the properties had been produced before Court or at any rate the properties must be deemed to have been in the custody of the Court with the Police under its direction and if that be so, the Court has jurisdiction to pass an order for disposal of the property, or in the alternative, has power to direct the State of Mysore to pay a sum of Rs. 16,000/- being the value

of the articles that were in the custody of the police, which were said to have been lost. In order to be able to examine the contentions raised, it is necessary to refer to the different provisions contained in Chap. 43, Criminal Procedure Code, which deal with the question of disposal of property.

6. Section 516A provides that when property regarding which an offence appears to have been committed, or which appears to have been used for the commission of an offence, is produced before any criminal Court during an enquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the enquiry or trial. Power is also given to the Court to direct disposal by sale or otherwise of property which is liable to speedy or natural decay.

7. Section 517 regulates the disposal of property upon conclusion of a trial. By this section, Courts are given the widest power as regards disposal of property referred to in Section 516-A and the power extends even to ordering destruction, confiscation or delivery to any person claiming to be entitled to possession of it. By Sub-Section (3) of Section 517 the Legislature has provided that in case where property is livestock or subject to speedy or natural decay, the Court of first instance will have the power to dispose of it even before the time for presentation of an appeal has elapsed.

8. Sub-Section (4) of Section 517 contains the provision that nothing in Section 517 will be deemed to prohibit any Court from delivering any property under provisions of Sub-Section (1) to any person claiming to be entitled to the possession thereof upon executing a bond with or without sureties to the satisfaction of the Court engaging to restore such property to the Court if the order is modified or set aside on appeal. Then follows an explanation attached to the section which says that "property" would mean and include not only the property in its original state in the possession or control of any party but also property into which or for which the same has been converted or exchanged and includes everything acquired by such conversion or exchange, whether immediately or otherwise. The explanation seems to make it clear by necessary implications that the Court is clothed with the widest powers is following up property in respect of which an offence has been committed not only in its original state but also in any other shape or form into which it may have been converted. It is obvious from this that the Court has power to follow the property from hand to hand and makes no distinction between the property in its original state and its altered state.

9. On a consideration of the provisions contained in Sections 516-A and 517, it is plain that after the property is seized by the Police, orders for its final disposal can only be passed by the Court and the Police are expected to hold the property subject to the orders of the Magistrate. Therefore, if the property is with the Police the Magistrate alone has got jurisdiction to pass orders. Section 516-A has no application to the facts of this case because under that section the Court has power to pass an order for custody and disposal of property pending trial in such cases. As the trial in this case is concluded, the Court gets power under Section 517 to deal with the property. To enable a Court to act under this section, the property in question (a) must be produced before it, or (b) must be in its custody, or (c) it must appear that an offence has been committed regarding it or (d) it must have been used for the commission of any offence and one of these conditions at least must exist in an enquiry or trial in such Court. This section presupposes the existence of property either in the custody of the Court or in the possession of any

party to the litigation or any other person who is amenable to the jurisdiction of the Court. If the property has been disposed of under the orders of the Court, in such case the Court is empowered to pass the order of disposal in respect of the money value of the property.

10. Mr. Javali contended that the property, regarding which an offence appears to have been committed, was in the custody of the Police under the direction of the Court, whether or not the property or its money value is available, the Court has still power to pass an order to dispose of the property. If the property or its value in money is not available, for whatever reason it may be, it is difficult to see how the criminal Court gets jurisdiction to dispose of such property. The essential requisite to get jurisdiction to dispose of the property is that the property must be available. Otherwise, the logic of Javali's contention would be that the Court can pass, so to say, a money decree against a person who may be deemed to have lost or misappropriated the property in question. If the property is seized by the Police and kept by them under the direction of the Court, undoubtedly it must be deemed to be in the custody of the Court. When the property in the custody of Police is stolen, as it is alleged in this case, and it is not traced, the question that arises for consideration is whether the Magistrate gets jurisdiction under Section 517 to dispose of such property. If the property is disposed of and its money value is not available or is stolen and not traced and it is no longer available to the Court, no order can be passed, as contended by Mr. Javali, directing the State whose servants were in custody of the property, which is alleged to have been stolen, in discharge of their duty, to pay the money value of such property. If the property in the custody of the Police is proved to be one seized by them in the course of investigation regarding which an offence appears to have been committed and its value is proved, even in such a case the Court does not get jurisdiction under Section 517, Criminal Procedure Code, to dispose of the property unless the property is available for disposal. But in such a case, it is for the aggrieved party to seek his remedy through Civil Court.

11. There may be cases where the Court directs disposal of property in a particular manner and if that person disposes of that property in disobedience to the direction, the Court can direct, the guilty party to deposit the money value of the property in Court. But it is difficult to see how, when the property in the custody of the Police is stolen, the Court can still direct disposal of such property.

12. Mr. Javali urged that in the panchamas the value of the property has been stated to be Rs. 16,000 and if for any reason the property cannot be returned, the value thereof as stated above may be ordered to be paid to the petitioner. There is nothing in Section 515, Criminal Procedure Code, which enables the Court to make an order as contended by Mr. Javali. He contended that in any case the State Government is bound to return the property seized by its servants by reason of its statutory obligation or to pay its value if it had disabled itself from returning it either by its own act or by any act of its agents and servants. Reliance was placed on the decision in the *State of Gujarat v. Memon Mohamed Haji Hasan*¹, In that case, the Customs authorities of the State of Junagadh seized two motor trucks, a station wagon and other goods belonging to the respondent, on the ground among others, that they were used for smuggling goods in the State. The action was taken under the Junagadh State Sea Customs Act II of S.Y. 1898, then in vogue in the State. The respondent filed an appeal against this order. Pending the appeal, the State of Junagadh merged in the State of Saurashtra and thereafter with the former State of Bombay. In the meanwhile, the appeal was transferred to the Revenue Tribunal, which was constituted by the State of Saurashtra. On February 6, 1952 the Revenue Tribunal set aside the order of confiscation

of the Customs Authority and directed the return of the said vehicles to the respondent. On March 13, 1952, the respondent applied for the return of the said vehicle and was informed that they had been disposed of under an order of a Magistrate passed under Section 523 Criminal Procedure Code and the sale proceeds viz., 2,213-8-0 were handed over to a creditor of the respondent under an attachment order passed in his favor. The respondent filed a suit for the return of the said vehicles or in the alternative for their value, viz., Rs. 31,786-8-0 on the ground that pursuant to the said order of the Tribunal, which in the absence of any proceedings against it, had become final and hence the State Government was bound to hand over the said vehicles. The State Government denied the respondent's claim and took up diverse pleas. On those facts the court observed that the fact that an order for its disposal was passed by a Magistrate would not in any way interfere with or wipe away the right of the owner to demand the return of the property or the obligation of the Government to return it. The order of disposal in any event was obtained on a false representation that the property was an unclaimed property. Even if the Government cannot be said to be in the position of a bailee, it was in any case bound to return the said property by reason of its statutory obligation or to pay its value if it had disabled itself from returning it either by its own act or by any act of its agents, and servants. Precisely for the reasons stated in the above decision, if the Police had seized the property in connection with an offence and if they had dealt with the property in any manner without the order of the Magistrate, the remedy open to the petitioner is to file a civil suit.

13. It is not necessary to consider the other decisions cited by Mr. Javali as they are not applicable to the facts of this case.

14. On an examination of the relevant provisions I am of the view that there are two kinds of properties that are dealt with under the Criminal Procedure Code; firstly those that are seized by the Police and produced before the Court during the inquiry or trial and secondly those which are seized by Police and not produced during the inquiry or trial. The Police are empowered to seize the properties during the course of investigation. A duty is cast upon the police to report to a Magistrate the fact of seizure. If the property is produced before the Court, the court is empowered to pass an order in respect of it under Section 517 Criminal Procedure Code for its disposal after the conclusion of the inquiry or trial.

15. During the course of inquiry or trial the Court before whom the property is

¹ AIR 1967 SC 1885

produced is empowered to pass such orders as it thinks fit for the proper custody of such property pending the inquiry or trial under Section 516-A, Criminal Procedure Code. But if the property is not produced before the Court but remains with the police then under Section 523, Criminal Procedure Code the power is given to the Court to make such order as it thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereto or if such person cannot be ascertained, respecting the custody or production of such property. In any case, the property must be available.

16. In *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*², a question arose whether the Government was liable for damages in cases of tortious acts committed by public servants in the course of employment and in exercise of statutory functions delegated to them. The facts were that one of the partners of M/s. Kasturi Lal Ralia Ram Jain arrived at Meerut by the Frontier Mail from Amritsar on 20.9.1947 carrying with him gold, silver and other articles with a view to sell

the same, as the firm was dealing in bullion and other goods. While he was passing through the bazaar with this object, he was taken into custody by three police constable. His belongings were then searched and he was taken to the Kotwali Police Station, and was detained there.

His belongings which consisted of gold weighing 103 tolas 6 mashas and 1 ratti, and silver weighing 2 maunds and 6 1/2 seers were from him and kept in police custody.

On 21.9.1947 he was released on bail and some time thereafter the silver seized from him was returned to him. Ralia Ram, from whom these articles were seized, made repeated demands for the return of the gold and since he could not recover the gold from the police officers, he filed a suit against the State of Uttar Pradesh in which he claimed a decree that the gold seized from him should either be returned to him, or, in the alternative, its value should be ordered to be paid to him. The claim was resisted by the State on several grounds. It was urged that the State was not liable to return either the gold or to pay its money value. The gold in question had been taken into custody by one Mohammed Amir, who was then the Head Constable, and it had been kept in the Police Malkhana under his charge. Mohammed Amir, however, misappropriated the gold and fled away to Pakistan. It was further alleged that a case under Section 409 of the Indian Penal Code as well as Section 29 of the Police Act had been registered against Mohammed Amir, but nothing effective could be done in respect of the said case because in spite of the best efforts made by the Police Department Mohammed Amir could not be apprehended. Alternatively it was pleaded by the State that this was not a case of negligence of the police officers and that even if negligence was held proved against the said police officers, the State could not be said to be liable for the loss resulting from such negligence. In these circumstances, the Supreme Court ruled that in cases of tortious acts committed by public servants in course of employment and in exercise of statutory functions delegated to them by Government, the State is immune from liability and therefore the claim for damages was not sustainable.

17. What we are concerned in this case is whether the Magistrate had jurisdiction to dispose of the 'property' which was lost or stolen when in custody of the police. Even assuming that due to the negligence of the police officers the property was stolen and it was not detected, so long as the property is not available or its proceeds available,

² AIR 1965 SC 1039

the Magistrate cannot make an order under Section 517, Criminal Procedure Code.

18. Mr. Javali contended that this Court, in exercise of its inherent power under Section 561-A should direct the State to pay the money value of the property seized by the police. The provisions of this section can be invoked only in exceptional cases for which no express provision has been made by the Code and to redress only such grievance as calls for an immediate relief which can be granted only by the High Court. This power should be exercised with due care and caution and must conform to sound general principles and precedents. The property in this case was not at all produced before Court during enquiry or trial. In these circumstances, this Court, at any rate, cannot direct the State to pay the money value which itself is not determined and also not available.

19. In any view of the matter, there is no substance in this revision petition and accordingly it is dismissed.

Revision dismissed.