

Shaikh Raheman S/O Sk. Ibrahim Vs. State of Maharashtra

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Court : Mumbai

Decided On : Aug-06-1990

Reported in : 1991(1)BomCR263

Judge : H.W. Dhabe, J.

Acts : [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 49, 79, 93 and 94

Appeal No. : Criminal Writ Petition No. 82 of 1990

Appellant : Shaikh Raheman S/O Sk. Ibrahim

Respondent : State of Maharashtra

Advocate for Def. : G. Mishra, Astt. Govt. Pleader

Advocate for Pet/Ap. : Jugalkishore Gilda, Adv.

Disposition : Petition allowed

Judgement :

H.W. Dhabe, J.

1. This writ petition under Article 227 of the Constitution of India is preferred against the orders of the Courts below dismissing the application of the petitioner filed under section 94 of the Code of Criminal Procedure (for short the Cr.P.C.)

2. On 14-5-1990, the petitioner found that his truck bearing Registration No. MHV. 7677 was stolen. He, therefore, lodged a complaint in the Police Station, Akola, on 15-5-1990 that his truck was stolen at night on 14-5-1990 and that it has been stolen by Guptaji and Kazi Saheb, residents of Yeotmal. He, therefore, requested that investigation should be made in the offence of theft and the accused should be suitably punished. Since nothing happened, he made an application to the Police Inspector, Police Station, Yavatmal on 18-5-1990 that his aforesaid truck was stolen by Guptaji and Kazi Saheb and that it is kept by them in front of Sarkari Bank near the Police Station. In spite of these complaints, no steps were taken by the Police in the matter. He again made a complaint to the Police Station, Akola, on 13-6-1990 but without any effect.

3. The petitioner then made an application before the Chief Judicial Magistrate, Akola, on 16-6-1990 for issuance of a search warrant to recover his truck which was according to him stationed near Sarkari Bank, Yeotmal. The learned Magistrate, without noticing the police, summarily rejected the said application on the ground that it did not show under which provision it was made. The learned Judicial Magistrate also observed that the petitioner had not shown whether the said Court had jurisdiction to issue search warrant to the P.S.I. Yeotmal and Darwha and no details about the premises to be searched except surnames of the alleged accused persons were given. The petitioner challenged the order of the learned Judicial Magistrate by preferring a revision petition before the Additional Sessions Judge, Akola, which was also dismissed. Feeling

aggrieved, the petitioner has preferred the instant writ petition in this Court under Article 227 of the Constitution of India.

4. The learned Counsel for the petitioner has urged before me that the impugned orders of both the Courts below are illegal and preverse and that they failed to exercise the jurisdiction vested in them under law, resulting in grave injustice to the petitioner. As regards the impugned order of the learned Additional Sessions Judge that the petitioner has not lodged any complaint about the left of his truck with the police, the learned Counsel for the petitioner has submitted before me that the said finding of the learned Additional Sessions Judge is preverse because without making any enquiry from the police, he has rendered the said finding. He has brought to my notice the aforesaid complaints made by the petitioner to the Police Station, Akola, as well as in the Police Station, Yeotmal about the theft of the aforesaid truck. He has further submitted that there are sana entries relating to the said complaints in the police station. The above submission made on behalf of the petitioner has not been controverted on behalf of the State. It has, therefore, to be held that the petitioner had lodged complaints about the left of his truck with the Police Station, Akola, as is clear from the complaints referred to above. The learned Counsel for the petitioner has brought to my notice the documents of the aforesaid truck which prima facie show that the petitioner is the owner of the said truck. The said documents are about the registration of the vehicle under the Motor Vehicles Act, about the payment of tax and also about the insurance of the said vehicle. It is, therefore, clear that on the complaints being lodged about the left of his truck, the police should have taken steps to investigate the said offence.

5. As regards the application made by the petitioner for getting search warrant to recover his truck, the said application is obviously preferred under section 94 of the Cr.P.C. although the said section is not mentioned in the application filed by the petitioner. However, it is well settled that if the Court has jurisdiction relatable to section 94 of the Cr.P.C., the mere fact that the petitioner has not mentioned the said section in his application will not take away the jurisdiction of the Court to exercise power thereunder. Another objection relating to the exercise of power to issue search warrant considered by the Courts below is that unless some criminal case is pending, the Court has no power to issue search warrant. The said question is so more res integra because it stands concluded by the judgment of this Court in the case of (Re-Mohmed Tahir) A.I.R. 1934 Bom 104 and the judgment of the Supreme Court in the case of Mohammad Serajuddin v. S.C. Misra, : 1983(13)ELT1370(SC) . It is clear from the above judgment of the Supreme Court that the pendency of the criminal case is not sine quo non for exercise of power under section 94 of the Cr.P.C. Bare perusal of section 94 of Cr.P.C. itself does not show that any such pendency of the case is necessary which is the requirement of section 93 of the Cr.P.C.

6. As regards the details of the place to be searched, in the application it is clearly stated that the aforesaid truck was stationed by the aforesaid persons viz. Guptaji and Kazi Saheb near Sarkari Bank, Yavatmal. Be that as it may, if some more details were necessary to be given by the applicant, he could have been asked to furnish those details, particularly in such a serious matter when a valuable article like the truck worth more than Rs. 1,00,000/- is alleged to be stolen by the aforesaid persons.

7. It also appears from the order of the learned trial Magistrate that she is doubtful whether she has jurisdiction to issue search warrant to the P.S.O. Yavatmal and Darwha who are not within her jurisdiction. In this regard, it is necessary to notice section 99 of the Cr.P.C. by which the provisions of section 79 of the Cr.P.C. are made applicable to the search warrant issued under sections 93 and 94 of the Cr.P.C. Section 79 of the Cr.P.C. it may be seen, deals with execution of the warrant outside the jurisdiction of the Court. It is, therefore, clear that the Court can issue search warrant which the P.S.O. Akola, can execute in the manner provided in section 79 of the Cr.P.C. The learned Magistrate has thus failed to exercise jurisdiction vested in her by law resulting in grave injustice to the petitioner. The impugned orders of the courts below are, therefore, liable to be set aside.

In the result, the instant writ petition is allowed. The impugned orders of the courts below are set aside and the learned trial Magistrate is directed to consider the application of the petitioner for search warrant under

section 94 of the Cr.P.C. on merits after issuing notice to the State and then consider the question of issuance of search warrant in the instant case in the light of the observations made in this judgment. Rule made absolute in the above terms. The learned trial Court is directed to decide the application within 7 days from the date of the receipt of this order.

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