Nanda Kishore Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Apr-12-1978

Reported in : 1979CriLJ733

Judge : N.R. Kudoor, J.

Appellant : Nanda Kishore

Respondent : State of Karnataka and ors.

Judgement :

N.R. Kudoor, J.

1. The petitioner Nanda Kishore has filed this revision petition against the order dated 6-8-1977 passed by the Sessions Judge, Bidar in Criminal Misc. Appeal Number 22/1975 directing return of six articles M. Os. 1 to 6 to the legal representatives of the deceased appellant, who are representatives of the deceased appellant, who are respondents 2 to 6 herein. The facts necessary for the disposal of this revision petition may be stated in brief as under:

2. The Town Police of Bidar prosecuted the petitioner herein under Section 98 of the Karnataka Police Act, for having been found in possession of M. Os. 1 to C under the reasonable belief that they were the stolen properties and the petitioner failed to account for the possession of the same, in the Court of the Chief Judicial Magistrate, Bidar, in C. C. No. 931/3/73. The Chief Judicial Magistrate acquitted

the petitioner holding that the prosecution failed to establish that the properties M. Os., 1 to 6, of which the petitioner was found in possession were the stolen properties as per his Judgment dated 30-8-1975. As regards the disposal of the properties, one Govardhan who was the father-in-law of the petitioner put in his claim for possession of the properties in the criminal case. The Chief Judicial Magistrate, having considered his claim, directed return of M. Os., 1 to 6 to the petitioner. Aggrieved by the order regarding the disposal of the properties, the said Govardhan preferred Criminal Miscellaneous appeal No. 22/1975 before the Sessions Judge, Bidar. The appellant Govardhan died during the pendency of the appeal and in his place his legal representatives were brought on record. The learned Sessions Judge allowed the claim of the appellant, set aside the order of disposal of the properties passed by the trial Court and directed return of the properties to the legal representatives of the appellant. The petitioner has filed the present revision petition questioning the correctness of the order of the Sessions Judge.

3. It is seen from the records that the claim advanced by Govardhan for possession of the properties was based on a decree obtained by him in O- S. No. 183/1974 on the file of the Munsiff, Bidar, against the petitioner herein, under which the said Govardhan was declared to be the owner of the properties M.Os. 1 to 6 subject to the decision in the criminal case. The learned Sessions Judge, who reversed the order of the trial Court, has placed reliance on this decree.

4. Now, the question that arises for consideration will be whether the order of the learned Sessions Judge in directing the return of M.Os. 1 to 6 to the legal representatives of Govardhan relying on the declaratory decree obtained by the said Govardhan in O.S. No. 183 of 1974 is in order.

5. It is not in dispute that Nos. 1 to 6 the six gunny bags containing copper wires and the copper and brass vessels were seized from the possession of the petitioner and they were produced before the Chief Judicial Magistrate in the criminal case lodged against the petitioner under Section 98 of the Karnataka Police Act. The prosecution was launched against the petitioner on the allegation that the properties were the stolen properties and the petitioner was found in

possession of them under suspicious circumstances and that he fails to account for their possession. The learned Magistrate on consideration of evidence adduced by the prosecution, came to the conclusion that the prosecution has failed to prove that there was reasonable ground to believe that the properties seized from the possession of the petitioner were the stolen properties and he acquitted the petitioner of the offence with which he stood charged. Regarding the disposal of the properties, the learned Magistrate, rejecting the claim advanced by Govardhan, father-in-law of the petitioner on the strength of the decree obtained by him in O.S. No. 183/ 1974, directed the return of the properties to the petitioner as he was entitled to possession of those properties, acting under Section 517 of the Code of Criminal Procedure, 1898, shortly called 'the Code'. Sub-section (1) of Section 517 of the Code is relevant for our purpose, which reads thus:

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 pro- duced before it or in its custody or regarding which an offence appears to have been committed, or which has been used for the commission of any offence.' Sub-section (1) of Section 517 of the Code provides for disposal of the property on the conclusion of an inquiry or a trial. One of the modes of disposal of the property is to deliver the property to any person claiming to be entitled to possession thereof.

6. As a normal rule, when an accused is acquitted of a criminal charge, and he claims that the property involved in the case belongs to him, or that he is entitled to the possession of the property, the proper order to be passed would be to return the property to the accused from whose possession they were seized. this Court in Ramakamma v. Byrappa, (1966 (2) Mys LJ 344), has held that where the properties are unidentifiable and commonly possessed by large number of persons in rural areas and when the accused when examined under Section 342, CrP.C. claims the property as his, the normal rule is to return the property to the accused when he is discharged or acquitted. The question that would arise in this case would be whether there was any justification for the learned Sessions Judge to depart from this normal rule in view of the claim of Govardhan based on the

decree obtained by him in the civil suit filed against the petitioner.

It appears that Govardhan filed O.S. No. 183/1974 for a declaration that he was the owner of the properties M. Os- 1 to 6 when M.Os. 1 to 6 were produced in the criminal case and the trial of the said case was pending. The operative portion of the decree obtained by Goverdhan reads thus:

Subject to the orders that may be passed in C. C. No. 584/73 of J.M-F.C. 1st Bidar, the plaintiff is declared to be the owner of the suit properties now in attachment in that case.

C. C. No. 584/73 referred to in the decree is a mistake for the charge-sheet number. The charge-sheet number of the case was 584/73 whereas the Criminal Case number after filing the charge-sheet was given as C. C. No. 931/3/1973. The very decree on which reliance was placed by Govardhan shows that the relief he got under that decree was subject to the orders that would be passed in the criminal case. Besides, he has, merely obtained a declaration that he was the owner of the properties M. Os. 1 to 0. He has not claimed any relief for possession though he knew that the properties were seized by the police from the possession of the petitioner against whom he filed the suit. The criminal Court while dealing with the disposal of the property after the completion of the trial of the case, under Section 517 of the Code, is primarily concerned with the question as to who is entitled to possession of the property and not so much of its ownership. Of course, the possession must be a rightful possession or a lawful possession. We can conceive a case where a person could be in lawful possession of a property even though he may not be the owner thereof. The finding of the trial court while acquitting the petitioner was that the prosecution has failed to prove that there were reasonable grounds to believe that the properties seized from the petitioner were the stolen properties and in that view of the matter, the petitioner giving account for possession of them did not arise, which would mean that his possession was lawful. However, the learned Sessions Judge, placing strong reliance on the decree of the civil court, disturbed the finding of the trial court and directed return of the properties to the legal representatives of Goverdhan on the ground that he was declared to be the owner thereof. To reach such conclusion,

the learned Sessions Judge appeared to have placed reliance on some of the rulings, which I shall presently refer.

The first ruling on which reliance was placed by the learned Sessions Judge was the decision in Deo Kuer v. Sheo Prasad Singh : [1965]3SCR655 . In that decision it was held that a suit for declaration of title to property attached under Section 145 of the Code without further relief of possession is maintainable as it is not hit by the proviso to Section 42 of the Specific Relief Act-The learned Sessions Judge, applying the above principle, held that Goverdhan could not have asked for the relief of possession in respect of M.Os. 1 to 6 in the decree obtained by him in O.S. No. 183/74 as they were in custodia legis when he obtained the decree. It seems to me that that reasoning of the learned Sessions Judge was erroneous because the properties M.Os. 1 to 6 which were produced by the police in the criminal court cannot be said to beincutodia legis ' as they were not taken into custody by the court under any order passed by it-Admittedly, the police seized those articles from the petitioner suspecting them to be stolen properties and produced them before the court by way of evidence in the criminal case instituted against the petitioner. They were not taken into custodia legis by the criminal court by attachment as in a case arising under Section 145 of the Code. This is also very clear from the fact that the properties M.Os. 1 to 6 appeared to have been got attached by Goverdhan in the civil suit filed by him. If the properties were in custodia legis, there was no need for Govardhan to get them attached once again in the civil suit. The properties were produced before the criminal court by the prosecution on the ground that the petitioner has committed certain offence in respect of those properties. There was no dispute regarding the possession of those properties before they were produced before the criminal court as they, were admittedly seized from the possession of the petitioner. That being so, certainly Goverdhan, when he sought for declaration of title to M.Os. 1 to 6, would have sought for the relief of possession from the petitioner against whom the suit was directed even though the properties were in the custody of the criminal Court, j In that view of the matter, it seems to me, the reasoning adopted by the learned Sessions Judge that Goverdhan was entitled to possession of M.Os. 1 to 6 on the strength of a mere declaratory decree obtained by him is not correct.

7. The next decision relied on by the learned Sessions Judge is the decision in Ahmed Sahib v. Commr. of Police Madras : AIR1970 Mad220 . In that decision, the words 'person entitled to possession' occurring in Section 523 of the Code were interpreted. The relevant portion of the Judgment reads thus (at p. 1018 of Cri LJ):

Once the property is seized under the circumstances, mentioned in the said provision, irrespective of the fact whether the investigation by the police disclosed an offence or not, the Court has to dispose of the property. While doing so, it has got absolute discretion to pass an order as it thinks fit respecting the disposal of such property. But, if it orders delivery of the property, then it has to deliver it to the person entitled to the possession thereof ...Normally, in cases where the offence is not made out, the property should be delivered to the person from whom it is seized or taken. But it will depend upon the circumstances of each case. In such cases, the actual possession of the property at the time it was seized may be a relevant factor but not conclusive to determine the entitlement of such possession. The words used in Section 523 (1) Criminal P. C. are 'the person entitled to the possession of the property.' These words cannot be equated with actual possession. Nor can they be equated with the expression 'the person from whom the property is seized or taken.' A person may be in unlawful possession at the time it was seized though he has not committed the offence, and in that circumstance, it cannot be said that he is entitled to possession. It must be a lawful possession. The expression 'entitled to possession' is the sine qua non for the delivery of property under Section 523, Criminal P. C.

Even in the above decision, emphasis was placed on lawful possession of the property at the time of its seizure as a relevant circumstance to be taken into Account at the time of disposal of the property. I do not find any emphasis being put on the ownership of the property. That being so, the above ruling also would not help to support the view taken by the learned Sessions Judge that the legal representatives of Govardhan were entitled to the possession of the properties on the strength of the decree in O.S. No. 183/74 obtained by Govardhan.

8. The last decision to which a reference was made by the learned Sessions Judge is the decision in Yousoof Marakair v. State of Mysore AIR 1969 Mys 203 : 1969 Cri LJ 757. It was held in that decision that where the property is found to be stolen property and at the same time found to have been purchased by another person in good faith for value, whether from a private person or in public auction by an order passed under Section 524, Cr.P.C. the person entitled to possession of the same is the person who originally lost possession of the property in consequence of theft or misappropriation and the other person who subsequently purchased the property is only entitled to be compensated, or claim refund of the money in deposit at the disposal of the Government. The above decision will not apply to the facts of the case on hand, because, in this case, the property which was found in the possession of the petitioner was found to be not 1970 stolen property and it was not declared that the possession of the petitioner was unlawful when the property was seized.

9. Shri K. S. Savanur, learned Counsel appearing for the petitioner placed reliance on a ruling in State Bank of India v. Rajendra Kumar Singh : 1969 CriLJ659 . Dealing with the scope of Section 517 of the Code, their Lordships observed as follows at p. 405 (of AIR) : (at p. 663 of Cri LJ):

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

Their Lordships in the above decision emphasised that the question to be considered while disposing of the property under Section 517 of the Code is the 'right to possess' and not the ownership of the property to be disposed of.

10. If the above principle is applied to the facts of this case, I am inclined to hold that the view taken by the learned Session Judge that the legal representatives of Govardhan were entitled to the possession of the properties on the strength of the declaratory decree obtained by Govardhan in O.S. No. 183/74, is clearly erroneous.

11. Incidently, I may also refer to the nature of the declaratory decree obtained by Govardhan and its effect on the decision of trial Magistrate regarding the disposal of the property. It is seen from the decree in question that Govardhan, the plaintiff in O.S. No. 183/74, was declared to be the owner of the suit properties (M. Os. 1 to 6 in the criminal case> subject to the orders that would be passed by the trial magistrate in the criminal case. The criminal Court, on the conclusion of the trial of the case, could dispose of the property in the manner provided under Section 517 of the Code and one of the modes of disposal of the property would be to return the property to the person claiming to be entitled to possession thereof. It is obvious from the wordings of the decree that Govardhan, was declared to be the owner of the property subject to such a decision by the trial magistrate which would mean that the decree in question would not come in the way of the Magistrate in disposing of the property under Section 517 of the Code. In this view of the matter also, it appears to me that the conclusion reached by the learned Sessions Judge in disturbing the findings of the learned trial Magistrate cannot be sustained.

12. In the result, for the foregoing reasons, I allow this revision petition, set aside the order dated 6-8-1977 passed in Criminal Misc. Appeal No. 22 of 1975 by the Sessions Judge, Bidar, and restore the Order of the trial Court dated 30-8-1975 made in C. C No. 931/3/1973.