

Nagaraj Vs. Mohan

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Court : Karnataka

Decided On : Oct-11-1985

Reported in : ILR1986KAR236

Judge : Kudoor, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 451, 452 and 457

Appeal No. : CrI. R.P. No. 297 of 1985

Appellant : Nagaraj

Respondent : Mohan

Advocate for Def. : B.V. Acharya, Adv. for ;Respondent-1

Advocate for Pet/Ap. : Pramila, Adv.

Disposition : Revision dismissed

Judgement :

ORDER

Kudoor, J.

1. This Revision is preferred against the order dated 7-6-1985 passed by the Sessions Judge, Shimoga, in Cr. R.P. No. 13/85.

2. The facts relevant for the disposal of this revision may, briefly, be stated as under :

The petitioner H.P. Nagaraj (who will be hereinafter referred to as the complainant) filed a complaint under Section 200 Cr. P.C. before the II Additional Munsiff & J.M.F.C. (II Court), Shimoga against the respondents (who will be hereinafter referred to as the accused) for offences punishable under Sections 406 and 465 I.P.C. The material allegations levelled against the accused in the complaint were that the 1st accused Mohan took forcible possession of the complainant's Matador van bearing Registration No. CNS 4933, having got up false documents by obtaining signatures of the complainant on blank papers and also on a stamp paper by force with the help of Parameswarappa the P.S.I. of Old Town Police Station, Bhadravathi and subsequently obtained a power of attorney from the complainant in respect of the vehicle by persuading him to execute the same on the pretext that he would run the vehicle for hire and pay the balance loan amount due to the Karnataka State Financial Corporation (K.S.F.C.) obtained by the Complainant for which the mother of the 1st accused was the guarantor. The complainant having executed the document felt suspicion on the bona fides of the 1st accused since the 1st accused soon after obtaining the power of attorney, filed a caveat in the Court of the Munsiff at Shimoga respecting the vehicle. So he revoked the power of attorney executed by him in favour of the 1st accused by issuing him a notice and demanded return of the vehicle to him. Since the 1st accused refused to return the vehicle the complainant preferred the complaint referred above.

3. The Magistrate referred the complaint to the P.S.I. (Crime Branch), Doddapet Police Station, Shimoga for investigation under Section 156(3) Cr. P.C. The P.S.I., Doddapet Police Station, on receipt of the complaint, registered the crime in Crime No. 40/85 and took up investigation. In the course of the investigation of the crime, the P.S.I. seized the matador van on 11-2-1985 and reported the seizure to the Magistrate and obtained permission to retain the vehicle in his custody pending submission of the final report. On the same day, that was on 11-2-1985 the 1st accused filed an application under Section 457 Cr. P.C. before the Magistrate for release of the vehicle in his favour. On 12-2-1985, the complainant also filed a

similar application under Sections 451 and 457 Cr. P.C. to release the vehicle in his favour. During the pendency of the bearing of these two applications, the P.S.I having completed the investigation, placed the chargesheet against the accused on 13-3-1985. While producing the documents along with the chargesheet, the P.S.I. had informed the Court that the records pertaining to the seizure of the vehicle had already been submitted to the Court on 11-2-1985.

4. The Learned Magistrate, having regard to the dispute between the rival claimants relating to the ownership of the vehicle and the Registration Certificate of the vehicle standing in the name of the complainant, took the view that the complainant has got better claim for possession than the accused and held that the complainant was entitled to the interim custody of the vehicle. So he allowed the application filed by the complainant as per his order dated 26-3-1985, rejecting the application filed by the 1st-accused.

5. The 1st accused, being aggrieved by this order carried the matter to the Court of the Sessions at Shimoga in Cr. R.P. No. 13/85. The Sessions, Judge, having considered all the relevant material and also the arguments advanced by the parties came to the conclusion that the discretion exercised by the Magistrate was improper as it did not accord with the settled position of law and so reversed the order of the Magistrate and granted interim custody of the vehicle in favour of the 1st accused as per his order dated 7-6-1985.

6. This revision is by the complainant against the order passed by the Sessions Judge.

7. The main thrust of the argument advanced by Smt. Pramila in assailing the validity and legality of the order passed by the Sessions Judge was that the Learned Judge has firstly exceeded his revisional jurisdiction and secondly his approach in reversing the order was based on erroneous understanding of the facts and circumstances of the case. Elaborating these contentions, she proceeded to argue that judicial discretion exercised by a Court of competent jurisdiction cannot lightly be interfered with in exercise of the revisional powers whereas the Learned Sessions Judge has reversed the well-reasoned order of the Magistrate without any valid ground ; that no prima facie offence was made out

against the accused is not a correct criteria in deciding the question of releasing the seized property in favour of the accused ; that the Magistrate has not yet taken cognizance of the offence is again not a point in favour of the accused for granting interim custody of the property involved in the case and the finding that the discretion exercised by the Magistrate does not accord with the settled position of law is highly erroneous. On these grounds, she commended for acceptance of the order passed by the Magistrate in reversal of the order of the Sessions Judge.

8. Sri B.V. Acharya, the Learned Advocate appearing for the 1st accused, argued in support of the order of the Sessions Judge. He contended that on a plain reading of the order, the only conclusion that could be reached is that the Learned Judge has reached a correct conclusion in the circumstances of the case and also on the material produced, having kept in view the correct legal position relating to the interim custody of the property during the pendency of the enquiry or trial. He further contended that having regard to the admitted facts of the case and also the documents produced, the view taken by the Sessions Judge that the vehicle in question was given to the possession of the 1st accused on 17-10-1984. that the possession of the vehicle was continued with him next before the seizure of the vehicle and that the vehicle was seized from his possession is just and proper. Sri Acharya questioned the propriety of the conduct of the complainant in claiming custody of the vehicle by filing a criminal complaint, alleging certain offences against the accused and getting the vehicle in the possession of the 1st accused seized by the police, having admitted in his complaint that he had executed a general power of attorney in favour of the 1st accused on 23-11-1984 in respect of the vehicle, that the 1st accused was in possession of the vehicle, that he issued a notice of termination of the power of attorney on 17-1-1985 and since the 1st accused refused to return the vehicle inspite of several requests he filed the complaint. Sri Acharya says that the complainant could recover possession of the vehicle on the allegations made against the 1st accused in his refusing to return the vehicle, only by approaching the proper Civil Court and filing a civil suit for the possession of the vehicle and he cannot seek possession of the vehicle under the pretext of filing a criminal complaint alleging certain offences against the 1st accused. Finally he maintained that in view of the documents produced in the case to which both the complainant and the 1st accused were parties and without going

to the disputed questions over those documents at this stage ; the fact that the 1st accused had paid to the K.S.F.C. portion of the balance amount due in respect of the vehicle and that the vehicle was seized from the possession of the 1st accused, the only reasonable conclusion that could be drawn is that the 1st accused, and not the complainant is entitled to the interim custody of the vehicle and in that view the order passed by the Learned Sessions Judge is unexceptionable and does not suffer from any legal infirmities. On these grounds, he submitted the revision is liable to be dismissed.

9. The short point that arises for decision is whether the order under revision is sustainable.

10. Chapter XXXIV Cr. P.C. deals with disposal of property. Three modes of disposal of the property are contemplated under this chapter. Section 451 provides for an order for custody and disposal of property pending trial in certain circumstances, Section 452 deals with the order for disposal of property at the conclusion of the trial and Section 457 deals with the procedure for disposal of the property or the delivery of such property to the person entitled to the possession thereof upon a report of seizure of the property is made by the police under the Code to the Magistrate and when such property is not produced before the Court during an enquiry or trial. In the other words, Chapter XXXIV dealing with the disposal of the property provides a trichotomy in the matter of disposal of the property as observed by the Supreme Court in Ram Prakash v. State of Haryana, : 1978 CriLJ1120 . The relevant observation is found in para-3, reads thus :

'Chapter 34 of the Criminal Procedure Code deals with disposal of property. There is a trichotomy in the sense that where property has been seized by the police, but not produced before the Court, the power to dispose it of is covered by Section 457. Where property has been seized and/or otherwise produced before the Court, the manner to dispose of such property is governed by Section 451. If the question of disposal arises after the enquiry or trial in any criminal court is concluded, the disposal of the property involved in the case is governed by Section 452.'

11. Although elaborate argument was advanced by the Learned Advocates appearing for both the parties, bearing upon the question of disposal of property

under Section 457 Cr. P.C. as if the case is heard, is covered by the said section the material in the case discloses that the proper provision of law applicable at the time of making the order on the application made by the parties, was not Section 457, but it was Section 451 Cr. P.C. The argument now canvassed on the assumption that Section 457 is applicable, was obviously without noticing the fact that by the time the Trial Magistrate made his order, the police, after investigation of the case, had placed a charge-sheet in respect of the vehicle in question. Thus, it is obvious that on the day the application filed by the complainant and the accused came up for consideration, the vehicle in question was produced before the Court in the case in which the police had filed the charge-sheet and as such the claim preferred by the complainant as well as the 1st accused was in effect for the interim custody of the vehicle during the pendency of the trial of the case and squarely covered by Section 451 Cr. P.C. This was so, is also clear from the point formulated by the Magistrate for decision reads :

'Whether the complainant is entitled for the interim custody of the van or whether the 1st accused is entitled for the interim custody of the said van?'

Further, while the disposal of the property were to be considered under Section 457 Cr. P.C., the question of granting interim custody does not arise although, while granting delivery of the property to the person entitled to the possession thereof, the Magistrate may impose such conditions as he thinks fit. So. I shall proceed to consider the correctness or otherwise of the order under challenge within the scope and ambit of Section 451 Cr.P.C.

12. The relevant portion of Section 451 Cr.P.C. reads :

'When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do. the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.'

(emphasis is supplied)

13. It is the case of the complainant that he is the owner of the Matador van bearing Registration No. CNS 4933. He has borrowed a loan of Rs. 78,000/- from the K.S.F.C. for which the mother of the 1st accused is the guarantor out of which some amount is still outstanding. On 16-10-1984 he had a trip to Jog Falls from Bhadravathi and on his return from Jog Falls to Bhadravathi, at about 1-2 midnight both the accused along with their followers took the complainant to the Police Station at Bhadravathi and made him to sit there till next day morning. On 17-10-1984, at about 8-30 a.m., Parameshwarappa, the Sub-Inspector of Police, came to the Station and directed the complainant to settle the dispute with the accused. He forced the complainant to execute some documents and out of fear the complainant put his signatures on some blank papers including a stamp paper. Then the Sub-Inspector took the switch key of the vehicle from the complainant and gave the key and possession of the vehicle to the 1st accused. On 23-11-1984, the 1st accused induced the complainant to execute a general power of attorney respecting the vehicle in his favour. Soon after the 1st accused filed a caveat petition in the Munsiff's Court at Shimoga on 14-12-1984 in respect of the vehicle in anticipation of the complainant filing a civil suit whereupon the complainant also filed a similar Caveat Petition in the same Court against the 1st accused. Then the complainant having felt suspicion about the bona fides of the 1st accused in obtaining the power of attorney, sent a notice through his Counsel on 17-1-1985 to the 1st accused revoking the general power of attorney and also intimated the K.S.F.C. and the R.T.O. about the revocation of the power of attorney executed in favour of the 1st accused. He had also filed a complaint before the Superintendent of Police against the unlawful acts of the accused and also the Sub-Inspector of Police, Bhadravathi, on 18-10-1984.

14. The case of the 1st accused, as disclosed from his application for interim custody of the vehicle, is that the complainant had sold his Matador Van to the 1st accused on 17-10-1984 and gave possession of the vehicle to him. The sale consideration was Rs. 1,04,000/- and out of which a sum of Rs. 70,062/- is due to the K.S.F.C. and the balance amount of Rs. 33,938/- was paid to the complainant under the sale deed. The complainant gave all the documents pertaining to the van to the possession of the 1st accused. After the 1st accused purchased the van, the 1st accused discharged the outstanding loan to the extent of Rs. 20,000/-.

Subsequently the complainant also executed a power of attorney in favour of the 1st accused to facilitate him to run the vehicle and to carry out the obligation imposed on him under the sale deed as the Registration Certificate of the vehicle was yet to be transferred in the name of the 1st accused. His further case is that the vehicle was seized from his possession by the police.

15. It is relevant to notice the facts about which there is no dispute between the parties before adverting to the disputed aspect of the matter. The admitted facts are, that the complainant had purchased the Matador van and became its owner ; Registration Certificate, permit and all the other documents relating to the vehicle stand in the name of the complainant ; loan was obtained on the vehicle by the complainant from K.S.F.C. ; part of the loan amount payable to the K.S.F.C. is still outstanding ; that the complainant had executed a power of attorney in favour of the 1st accused and that the possession of the vehicle in question was with the complainant till 17-10-1984. The complainant has further admitted that from 23-11-1984 the date of execution of the power of attorney, till 17-1-1985 the date of the notice of its revocation the 1st accused was in possession of the vehicle as power of attorney holder.

16. The complainant has produced certain documents, other than the documents relating to the admitted facts. They are a copy of the complaint dated 18-10-1984 filed by the complainant against the accused and others to the Superintendent of Police, Shimoga ; a copy of the notice dated 17-1-1985 revoking the power of attorney, addressed to the 1st accused ; a copy of the notice dated 21-1-1985 informing the K.S.F.C. about the revocation of the power of attorney and two postal acknowledgments for having sent the notices to the 1st accused and the K.S.F.C.

17. As against this, the documents produced by the 1st accused are, the original sale agreement dated 17-10-1984 executed by the complainant in favour of the 1st accused, a copy of the general power of attorney dated 23-11-1984 executed by the complainant in favour of the 1st accused and four receipts passed by the K.S.F.C dated 21-11-1984 for Rs. 5,000/-, 26-11-1984 for Rs. 4,000/-, 15-12-1984 for Rs. 5,000/- and 15-1-1985 for Rs. 6,000/-, in all Rs. 20,000/- showing payments

made by the 1st accused towards the outstanding loan amount obtained on the vehicle.

18. We have now to see what really emerges from these admitted facts and also the documents produced by the parties. Undoubtedly the complainant was the owner of the vehicle in question. The document dated 17-10-1984 recites at the very outset that it is a meaning thereby that it is a sale deed out of free will. The signature of the complainant on the document is not disputed. What was disputed by the complainant is that he was forced to sign a written document, the contents of which he did not know. The question as to whether the said document was obtained by coercion or force in the manner alleged by the complainant, is a matter to be decided at the appropriate stage and a finding on this question at the stage of deciding interim custody of the property is indeed unwarranted. The recitals of the document, if read as they appear, show that the vehicle in question was sold by the complainant to the 1st accused ; that out of the sale consideration, a portion of the amount was earmarked for the payment of the balance loan amount to the K.S.F.C, and the 1st accused was to pay the said amount and discharge the loan; that the remaining portion of the consideration amount was received by the complainant and that the vehicle in question was given to the possession of the 1st accused. The next document in the sequence is the general power of attorney dated 23-11-84 executed by the complainant in favour of the 1st accused. The purpose of execution of the general power of attorney as could be gathered from its recitals prima facie, appears to me consistent with the contention of the 1st accused that it was executed to facilitate the 1st accused to use the vehicle and to do all the acts connected therewith and also enabling him to pay the outstanding loan amount to the K.S.F.C. since the documents relating to the vehicle such as the Registration Certificate, the permit etc., all stood in the name of the complainant although the vehicle in question was sold under the document dated 17-10 1984 and possession of which was given to the 1st accused. Further the 1st accused is shown to have paid the instalments due to the K.S.F.C. respecting the vehicle in question and this would be prima facie material to probabalise the version of the 1st accused that the vehicle in question was given to his possession under the deed of sale. Out of the four payments evidenced by the receipts passed by the K.S.F.C., the first payment was on 21-11 1984 which

was subsequent to the deed of sale and before the general power of attorney was executed and the remaining three payments which were on 26-11-1984, 15-12-1984 and 15-1-1985 were all in between the execution of the general power of attorney and the issuance of the notice of revocation of general power of attorney. The complainant himself has admitted at least the possession of the vehicle by the 1st accused during the period from 23-11-1984 the date of execution of the general power of attorney till 17-1-1985 the date of the notice of its revocation although it is his case that the 1st accused was in possession of the vehicle during this period as power of attorney holder. Further, it is clear from the complaint and also from the other material produced in the case that the 1st accused continued to be in possession of the vehicle next before the vehicle was seized by the police. Whether the sale deed and the general power of attorney had come into being in the manner and under the circumstances stated either by the complainant or by the 1st accused will have to be considered not at this stage but at the stage of the trial of the case as they are disputed questions of fact. Any decision, either directly or indirectly, on this question would amount to pre-judging the issue and indeed unwarranted and impermissible in law. The material placed by both the parties will have to be taken into consideration as they appear, for the purpose of deciding who, among the rival claimants, is better suited for the proper custody of the property pending conclusion of the enquiry or the trial of the case.

19. In this context, the only other document needing to be noticed is the complaint made against the accused and some others to the Superintendent of Police, Shimoga, on 18-10-1984 by the complainant. Of course the complainant has made serious allegations against the accused and others respecting the circumstances under which the sale deed in question came into being. But as pointed out by Sri B. V. Acharya there is the general power of attorney executed by the complainant subsequent to the filing of the complaint which speaks against the serious allegations made in the complaint about the sale deed. However, these are the matters to be considered at the appropriate stage, as they are all disputed questions of fact.

20. Having regard to all the facts and circumstances of the case and also the material produced, I find it difficult to persuade myself to hold that the Learned

Sessions Judge has committed any legal error in deciding the issue or exceeded his revisional jurisdiction in reversing the order passed by the Learned Trial Magistrate. I was taken through the order passed by the Learned Magistrate in this case and having gone through the reasoning of the Learned Magistrate, I agree with the observation of the Learned Sessions Judge that the discretion exercised by the Learned Magistrate is not proper and it does not accord with the settled position of law. He appeared to have approached the case as if he was called upon to decide the dispute between the parties regarding the genuineness and the validity of the sale agreement dated 17-10-1984. This approach of the Learned Magistrate, as observed by the Learned Sessions Judge, has resulted in the erroneous exercise of jurisdiction.

21. In the result, for the reasons stated above, I find no ground to interfere with the order passed by the learned Sessions Judge. Consequently, the revision fails and the same is dismissed.

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