

Sm. Saraswati Devi Vs. State

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Court : Allahabad

Decided On : May-26-1954

Reported in : AIR1955All127; 1955CriLJ331

Judge : Mukerji, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 88, 88(6A) and 439

Appeal No. : Criminal Revn. Nos. 842 to 844 of 1953

Appellant : Sm. Saraswati Devi

Respondent : State

Advocate for Def. : J.R. Bhatt, Asstt. Govt. Adv.

Advocate for Pet/Ap. : S.N. Katju and ;T.N. Sapru, Adv.

Disposition : Revision allowed

Judgement :

ORDER

Mukerji, J.

1. These three connected applications in (sic)vision arise out of certain objections that were(sic)ferred by the three applicants in the three re-(sic)ons in respect of proceedings under Section 88(6A) (sic) the Code of Criminal Procedure.

2. It appears that one Chandra Mohan was accused of having committed embezzlement of Government funds while he was in Government employ and was serving as an 'ahalmad' in the Kanpur Collectorate. Chandra Mohan absconded, & on 6-11-1952 he was proclaimed an absconder. On the same day an order was made for the attachment of the property of the absconder Chandra Mohan. Some items of property were attached the same day; other items of property were, however, attached later, that is to say, on 14-11-1952.

3. After the attachment, objections were preferred by Shyam Mohan the brother of Chandra Mohan, by Pran Chaudhari the mother of Chandra Mohan, and Smt. Saraswati the widowed sister of Chandra Mohan. These three objections were separately preferred, and apparently these three objectors laid claim to different items of property which, according to them, belonged not to the absconder but to the respective objectors.

It appears that Chandra Mohan lived jointly with his mother, widowed sister and his brother Shyam Mohan; at any rate, this was the case of the objectors, and it was because of this joint living that articles belonging to others were attached under a mistaken belief that the articles belonged to the absconder.

4. The Magistrate fixed a date for the decision of these objections: this date was 17-2-1953. On this date the Magistrate resorted to a very curious procedure. He sent for one of the boxes that had been attached, had it opened and asked the objectors to pick out the articles that according to them were theirs and to take those articles away.

Shyam Mohan was asked to make his selection first, and he selected a few things, namely one shirt, a book of Geeta and other small articles of worship. After Shyam Mohan's 'picking' had been made, the Magistrate asked Smt. Pran Chaudhari to make her selection. This lady refused to pick out things in that manner, and she said that that was not the way for her to select articles. She further said that she was not prepared to take just a small portion of the things that were hers, and after lodging her protest the lady left the court room.

The learned Magistrate thereafter made this order :

'It is no use pursuing the matter any further.

Let their objections be filed.'

From the aforementioned quotation it is clear that the learned Magistrate did not decide the objections of either of the objectors. The law enjoined the Magistrate to investigate the claims and come to a decision, and not to resort to letting the objectors pick and choose articles from just one box out of several.

5. Dissatisfied by the order of the Magistrate, the objectors went up in revision to the learned Sessions Judge. The learned Judge dismissed the revisions on two main grounds: first, that the conduct of the lady and the other objectors amounted to a withdrawal of the objections, and secondly, that no order made by a Magistrate under Sub-section (6A) of Section 88 was subject to scrutiny by a higher Court.

According to the learned Judge the only remedy that the objectors had was to file a suit in the civil Court in respect of the properties in dispute.

In my opinion, the learned Judge was wrong in taking this view. The withdrawal of Smt. Pran Chaudhari under the circumstances referred to above could never be interpreted to mean a withdrawal of the objections; indeed, the learned Magistrate did not view it that way, because if that were so, the learned Magistrate would not have said, 'let their objections be filed', but would have said, 'the objections have been withdrawn'.

The learned Judge is also not right when he says that the revision application referred to him was barred. Whether a revision would be barred or not, may be a question which may be debated. But what is, in my view, not debatable is that where there is no decision by a Magistrate on a point on which the law enjoins him to decide, a revision is certainly competent, for it is within the jurisdiction of the higher Court to direct a Court subordinate to act in accordance with law and to give a decision where the law asks that Court to make a decision.

6. In my view the learned Magistrate was wrong in the procedure that he followed and he was not justified in not deciding the objections which were preferred by the

three objectors in the manner in which the objections should have been decided.

7. In the result, I allow all the three revisions, set aside the order of the Magistrate dated 17-2-1953 and direct that he should decide the objections of all the three objectors in accordance with law at an early date.

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