

Nanak and ors. Vs. the State of U.P.

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SooperKanoon Citation : sooperkanoon.com/473124

Court : Allahabad

Decided On : Jul-18-1974

Reported in : 1974CriLJ1402

Judge : P.N. Bakshi, J.

Appellant : Nanak and ors.

Respondent : The State of U.P.

Judgement :

ORDER

P.N. Bakshi, J.

1. The applicants were convicted by the Judicial Magistrate Hapur, Meerut for an offence under Section 379, I.P.C. and sentenced to rigorous imprisonment for 18 months, The Magistrate also passed an order forfeiting the cycles of the applicants.

2. The case for the prosecution is that the applicants were found cutting wire from the side of the Government Tube Well Raghunathpur. Nanak applicant was perched upon the pole and cutting the wire. Abdul Haq and Momin applicants were collecting the out wire and making rounds thereof. They were arrested on the spot. An Art, two cycles and one wrist watch were also recovered from their possession at the time of their arrest.

3. This case of the prosecution has been proved by the evidence on the re. cord. The finding of fact recorded by the trial court has been confirmed by the appel. late court. The High Court did not admit the revision on merits but observed at the time of admission that it was doubtful whether the order forfeiting the two cycles was an order in accordance with law. Counsel for the State was granted time to study this question,

4. I have heard the counsel for the parties and have perused the record. According to the submission of the learned Counsel for the State the order confiscating the two cycles was covered by the provisions of Section 517, Criminal P.C. Section 517 (1), Criminal P.C. (Old) runs 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 produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

This section authorised the Court to confiscate any property produced before it or in its custody regarding which an offence appears to have been committed or which has been used for the commission of the offence. The argument of the learned Counsel for the State is that because the applicants went on their cycles to the side of the Government Tube Well Raghunathpur, where the wire in question was out, therefore, it should be deemed that these cycles were used for the commission of the offence. I am not inclined to accept this submission. It is a cardinal principle of the Interpretation of Statutes that a reasonable and natural construction should be put on its phraseology. If the submission of State Counsel is accepted it would lead to absurd and incongruous results. The power given under Section 517 (1). Criminal P. C . to confiscate, can be exercised only with respect to that property which has actually been used for the commission of the offence. For instance, implements for cutting the wire would certainly fall in that category, because it is by their use that the offence under Section 379, I. P. C., would have been committed. But merely because the accused applicants went on

their cycles to the tube well in question, it cannot be said that the cycles were used for the commission of the actual offence.

5. Learned Counsel for the applicant has cited a case reported in : AIR1970 Guj26 , Balamal Matlomal v. State of Gujarat, which supports the view, which I have taken. In that case the articles of theft were being carried on an auto rickshaw which was confiscated by an order of the Court. The High Court set aside that order on the ground that the rickshaw on which the articles of theft were being carried was not used for the commission of the offense. Some other cases have also been referred to in support of the aforesaid view, but it is not necessary for me to discuss each one of them. On a careful consideration of Section 517 (1), Criminal P.C. (1898), I am of the opinion that the order confiscating the cycles is wholly illegal and to that extent the impugned order must be set aside.

6. This application in revision is, therefore, partly allowed. The order of the Court below confiscating the two cycles in question is set aside. The cycles shall be returned to the applicants.