

Roop Kishore Vs. State of U.P.

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Court : Allahabad

Decided On : Jul-13-1989

Reported in : 1989CriLJ2326

Judge : S.R. Bhargava, J.

Appellant : Roop Kishore

Respondent : State of U.P.

Judgement :

ORDER

S.R. Bhargava, J.

1. These two matters have arisen from a common order and are being disposed of by this judgment.

2. A written complaint was made to the Chief Minister, U. P. that with the collusion of officials of Co-operative Bodies, U. P. Kargha Nigam and U.P.Z.C., Kanpur, a racket for diverting Janta Dhoties for sale in black market in operating and Janta Dhotis and controlled cloth valued at Rs. 50,000/- in each truck is being transported by big businessmen to Mathura. It was specifically alleged in this complaint that if bleaching plant of Roop Kishore of Mathura and other bleaching plants in Mathura are raided, considerable Janta Dhotis and cloth can be seized and corruption can be removed. Reminder of the complaint was sent and some

details about outlets of transport and diversion were mentioned. Matter was entrusted to C.B.C.I.D., U. P. On 23-5-1989 Roop Kishore and one Yad Ram were arrested and their bleaching plants at Mathura were raided. From their plants bales of cloth, some wet dhotis and cloth and some semi-processed dhotis and cloth were recovered. Case under Section 420, 1. P. C. and Section 13 of Prevention of Corruption Act was registered. Report of seizure was made to the Special Judge and there was a prayer that the recovered cloth and Dhoties be entrusted to the authorized Co-operative Societies for sale. Roop Kishore claimed Dhoties and cloth recovered from his bleaching plant and asserted that they were entrusted to him for bleaching by specified persons. He prayed that they may be delivered to him.

3. Prosecution vehemently asserted before the Special Judge that the Dhoties and cloth were meant for sale to weaker Section 2s but by corrupt means they have been diverted to general sale instead of sale through co-operative societies. Roop Kishore laid claim on the basis of possession for bleaching. During investigation the learned Special Judge refused to enter into the question of title or right to possession. He directed that Dhoties be handed over to Kendriya Upbhogta Sahkari Bhandar for sale. The said Bhandar till disposal of the case shall keep the sale price in the bank of Kendriya Upbhogta Sahkari Bhandar.

4. Against this Roop Kishore filed revision contending that it is not yet established that the Dhoties and cloth recovered from his bleaching plant are connected with any crime and that they having been recovered from the bleaching plant he is entitled to possession.

5. U. P. Upbhogta Sahkari Sangh Ltd. Agra moved an application for being impleaded in the revision. It appears that after the order impugned in the revision the said Sangh moved application under Section 457, Cr. P.C. to the Special Judge claiming 100 bales. It asserted that 100 bales each containing 100 pairs of Janta Dhoties were booked from Jhansi Depot to Mathura through Transport Company on 20-5-89 and they are out of 159 bales recovered from the plant of Roop Kishore.

6. Raju Khappar moved another application for impleadment in the revision and asserted that he delivered 23,600 Dhoties to Roop Kishore for bleaching. Both Upbhogta Sahkari Sangh and Raju Khappar asserted that the value of the Dhoties and cloth seized is much higher.

7. Yad Ram filed application under Section 482, Cr. P.C. and challenged the order of the Special Judge delivering the Dhoties and cloth to aforementioned Upbhogta Bhandar at Mathura for sale. He too asserted that the cloth and Dhoties were entrusted to him for bleaching. .

8. The wet and semi processed Dhoties and cloth can be damaged by passage of time and so the matter was considered urgent and with agreement of the parties the revision and application under Section 482, Cr. P.C. were simultaneously heard.

9. It may be said that no revision lies against an order relating to custody of property during investigation because it is not a final order. The application filed by Yad Ram is under Section 482, Cr. P.C. and this Court is competent to pass suitable orders under Section 482, Cr. P.C. Hence without going into the question of maintainability of the Revision this Court would proceed to dispose of the matter on merits.

10. Before touching the facts of this case further it would be useful to refer to specific provisions of Criminal Procedure Code. Since no enquiry or trial is pending, no order regarding custody of the property can be passed under Section 451, Cr. P.C. Under the Prevention of Corruption Act Special Judge exercises powers of the Magistrate. Under Section 457, Cr. P.C. when seizure of the property is reported to him Magistrate is competent to pass order regarding disposal of the property to the person entitled to possession thereof and if such person cannot be ascertained any other order respecting the custody and production of such property. If the person entitled to possession is known, the Magistrate may order the property to be delivered to him on such conditions as he thinks fit. If such person is not known the Magistrate should issue proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereon to appear before him and establish his claim within

six months from the date of such proclamation. If no person turns up to claim the property within the aforementioned period of six months and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may exercise power under Section 458, Cr. P.C. and direct that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale should be dealt with in such manner as may be prescribed if the person entitled to the possession of the property is unknown or absent and the property is subject to speedy and natural decay, or if the Magistrate to whom the seizure is reported is of the opinion that the sale would be for the benefit of the owner or that the value of such property is less than Rs. 10/-, the Magistrate may direct the property to be sold. If the order for sale is contemplated under Section 458(1) Cr. P.C. an appeal lies against it. Where the order is contemplated under Section 459 even then an appeal would lie against such order under Section 458(2), Cr. P.C. because the concluding portion of Section 458 makes it clear that the provisions of Sections 457 and 458 should, as nearly as may be practicable, apply to the net proceeds of such sale.

11. So the first question which arises is whether the impugned order of the Special Judge can be said to be falling under Section 458(1) or 459, Cr. P.C. It is evident that period of six months mentioned in Section 457(2) has not expired nor any proclamation has been issued by the Special Judge, hence it cannot be said that no person claimed the property within the specified period. Roop Kishore claimed right to possession on the basis of bailment to him for bleaching of Dhoties and cloth. He disclosed the persons who delivered Dhoties and cloth to him. Learned Special Judge did not go into the question whether Roop Kishore is unable to show that the Dhoties and cloth were illegally acquired by him. As a matter of fact the learned Special Judge did not even go into the question whether all the Dhoties and cloth are Janta Dhoties or cloth. So far as the recovery memo is concerned only against one item alleged to have been recovered from the bleaching plant of Yad Ram, description has been given as Janta Dhoties. The Special Judge, however, passed order for sale of the recovered Dhotis and cloth through Kendriya Upbhogta Sahakari Bhandar, Mathura only on the ground that they can be sold only through an authorized co-operative Bhandar. Scrutiny of the order passed by the Special Judge does not show that he intended to pass any

order under Section 458 or 459, Cr. P.C. Consequently it cannot be said that the impugned order is appealable and so this Court cannot grant any relief under Section 397 or 482, Cr. P.C.

12. Foregoing discussion about the provisions of Cr. P.C. regarding disposal of property during investigation clearly shows that the Special Judge did not follow the prescribed procedure. It is evident that Roop Kishore denied that the dhotis and cloth seized from his bleaching plant are Janta Dhotis and Janta Cloth. Raju Khappar, who wants to intervene, has also asserted that the dhotis delivered by him to Roop Kishore are not Janta Dhotis. During arguments in this Court it was unanimously accepted that all dhotis and cloth woven at Handlooms are not Janta Dhotis and cloth. The seized dhotis and cloth cannot be considered as Janta Dhotis and Cloth unless they have some distinguishing mark to identify them as Janta Dhotis and Cloth or there is some other evidence to call them Janta Dhotis. The 100 bales claimed by Upbhokta Sahkari Sangh Limited have to be got identified. Claim of U. P. Upbhokta Sahkari Sangh Limited was filed before the Special Judge after the impugned Order and it is still lying undiposed. If the dhotis and cloth seized are Janta Dhotis, question will arise whether the owners of the two bleaching plants obtained their possession illegally. It may be stated that by very nature of the work of bleaching plants persons owning the bleaching plants are balees of the dhotis and cloth found in their possession. As balees, unless the dhotis and cloth are apparently Janta Dhotis and there is evidence that their possession was obtained by illegal means, they have a right to possess the dhotis and cloth. There is controversy between the parties about the value of dhotis and cloth and unless the value is properly estimated no proper order regarding security can be passed. In these circumstances the impugned order cannot be sustained and has to be set aside.

13. Then the question arises what order should be passed. The recovery memo is not exhaustive and full description of the dhotis and cloth has yet to come before the Court, On the other hand, what appears is that after filing of the revision and the application under Section 482, Cr. P.C. orders were passed by this Court for delivery to Roop Kishore and Yad Ram on furnishing security of Rs. 4 Lakh each. But before these orders could be executed the property was delivered to Upbhokta

Sahkari Bhandar, Mathura Special Judge has restrained the said Bhandar from selling the dhotis and cloth.

14. So far as Raju Khappar is concerned vis-a-vis Roop Kishore he may be a baler of certain dhotis. The contract of balement between Roop Kishore and Raju Khappar need not be gone into in the criminal case. Terms of balement are known to Roop Kishore and Raju Khappar and they can settle the matter between themselves.

15. Considering all the circumstances for disposal of the revision and application under Section 482, Cr. P.C. impleadment of U.P. Upbhokta Sahkari Sangh Limited, Agra and Raju Khappar is not necessary. If Yad Ram has not yet lodged claim with the Special Judge he can do it even now. The order of the Special Judge entrusting the property for sale to Upbhokta Sahkari Bhandar, Mathura has to be quashed. But the said Bhandar is in custody of the property. It may not be economic or feasible to shift the property elsewhere.

16. Hence, in result, the revision and the application under Section 482, Cr. P.C. are finally disposed of at this stage. Impugned order of the Special Judge entrusting the property for sale to Upbhokta Sahkari Bhandar, Mathura is quashed, the property shall remain in the safe custody of the said Bhandar who shall not sell any dhoti or cloth out of the property delivered to it. The special Judge shall appoint one or more commissioners at the cost of Roop Kishore and Yad Ram for preparing inventory of the dhotis and cloth seized from the respective bleaching plants. The Special Judge shall direct the commissioner or commissioners to note if the dhotis and cloth contain any distinguishing mark to treat them as Janta Dhotis. The Special Judge has further to direct the commissioner or Commissioners to identify the bales claimed by U.P. Upbhokta Sahkari Sangh Limited, Agra and to estimate the value of the property seized from two bleaching plants. The Special Judge shall obtain report of Commissioner or commissioners as early as possible and shall then dispose of the claims of the parties or persons before him afresh according to observations made above.