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Biswanath Satpathy Vs. the State

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Court : Orissa

Decided On : Apr-28-1966

Reported in : AIR1967Ori46; 1967CriLJ506

Judge : R.K. Das, J.

Acts : Code of Criminal Procedure (CrPC) , 1898 - Sections 517(1); Indian Penal Code (IPC) - Sections 411

Appeal No. : Criminal Revn. No. 476 of 1965

Appellant : Biswanath Satpathy

Respondent : The State

Advocate for Def. : R.K. Mohapatra, Adv.

Advocate for Pet/Ap. : C.V. Murty, Adv.

Disposition : Revision dismissed

Judgement :
ORDER

R.K. Das, J.

1. On the night of 17-5-68 some unknown culprits committed theft in the house of the petitioner and removed cash amounting to Rs. 2081-00 including some G. C.

notes as also some prize-bonds. F. I. R. being lodged by the petitioner, P. W. 4 the Officer-in-charge, Sadar Police Station, registered a case. In course of investigation he arrested three of the accused persons who are said to have given recovery of a sum of Rs. 1307 and also two prize-bonds. After charge-sheet, the accused persons were sent up for trial for offences under Section 380, Section 411 and Section 457, Indian Penal Code.

2. The plea of the accused was one of a denial.

3. The trial court acquitted accused Bharat Bhoi, but convicted the other two, viz. Jai Bhoi and Bai alias Bihari Bhoi under Section 411, Indian Penal Code and sentenced them to undergo R. I. for one year each and directed the recovered property to be returned to the lawful owner.

4. On appeal being preferred by the accused persons, the Additional Sessions Judge of Cut-tack, maintained the conviction of the appellants but reduced their sentence to six month's R. I. With respect to the disposal of the stolen property, he directed that only the prize-bonds which had been proved to belong to the present petitioner be delivered to him and so far as the recovered G. C. notes were concerned, he directed them to be confiscated to the State. In this petition we are concerned only with that part of the order of the appellate Court which directed confiscation of the recovered G. C. notes to the State, under Section 517, Cr. P. C. The petitioner claiming to be the owner of the said G. C. Notes challenges the order of forfeiture passed by the appellate Court.

5. There is no doubt that some cash including some G. C. Notes were stolen from the possession of the petitioner. The case of the petitioner is that he was the Secretary of a Minor School and he had about Rs. 1750 belonging to the school with him as also some cash of his own including prize-bonds which were the subject-matter of the theft on the night of 17-5-63. He, however, could not identify the currency notes said to have been recovered from or at the instance of the accused persons in the aforesaid theft case, nor has he adduced any evidence to establish that the said notes belong to him. The appellate Court after a discussion of the evidence has come to the clear finding that the petitioner has failed to establish that the recovered cash belonged to him. Undoubtedly the currency

notes are unidentifiable articles, but the petitioner has nowhere stated that those Notes were part of his stolen property. In view of this position, the learned appellate Court directed confiscation of the said notes to the State. With regard to the prize-bonds, they were duly identified by the petitioner and their numbers tallied with the numbers given by the petitioner in Ext. 2 and thus, they were directed to be delivered to the petitioner.

6. The accused persons did not claim the cash to be theirs and altogether denied the recovery from their possession or at their instance. The mere fact that the accused persons have been convicted under Section 411 I. P. C. does not necessarily establish that the recovered G. C. Notes were the very property which was the subject-matter of theft in the house of the petitioner. The petitioner has to prove by evidence that the said G. C. Notes were his that were recovered from or at the instance of the accused in the said theft case. In the absence of such evidence, the petitioner is not entitled to get back the money merely because some G. C. Notes were also stolen from his house.

7. In a case reported in 17 Cut LT 93: (AIR 1952 Orissa 162), Pahalli Das v. State, this court in a similar case held that the place where the cash was concealed was rather unusual and may indicate that it did not belong to the accused, but that by itself, would not lead to the inference that it belonged to the complainant. It was the duty of the prosecution to establish that the cash belonged to the complainant. In the present case the clear finding of the appellate Court was that the prosecution had failed to prove that the money recovered at the instance of the accused belonged to the informant. The accused do not lay any claim to the money. On the other hand they deny the property recovery. In such a state of evidence, the only proper course left to the Court is to confiscate the property.

8. In a case reported in AIR 1954 All 758, Ramlal v. State, it was held by a Division Bench of the Allahabad High Court that when the accused does not claim the property and the rightful owner is not known and the property is obtained through the commission of an offence, the property could reasonably be ordered to be confiscated.

9. In a case reported in AIR 1953 SC 508, Pushkar Singh v. State of Madhya Bharat, it was held by the Supreme Court that unless it was found that an offence was committed in respect of the particular sum, the Court has no jurisdiction to order the payment of the amount to the complainant under Section 517, Cr. P. C.

10. The effect of the finding of the trial Court is that it has been established by the prosecution that an offence was committed by the accused in respect of the sum said to have been recovered at their instance. In such cases, the accused from whom the sum was recovered is ordinarily to get back the sum, but if he himself denies the recovery or does not put forth any claim to the same and the prosecution fails to establish that it is the property of the complainant, the Court is justified in confiscating the property as provided under Section 517(1) of the Cr. P. C.

11. Mr. Murty, learned counsel for the petitioner, contended that the accused persons, in course of investigation, made a confession before the police that the money recovered at their instance was the subject matter of the theft committed in the house of the petitioner and that on the basis of that statement, the petitioners is entitled to get back the said G. G. Notes . He made a prayer to call for the police diary to prove that in fact the accused made such a confession before the police. His contention is that even at this stage the police diary may be called for to make out a case in support of the complainant. For this he relied upon a decision reported in AIR 1958 Madh Pra 270, Prakash Chandra Jain v. Jagdish. That was a case where the trial court convicted the accused and directed the seized articles to be delivered to the complainant. On appeal the accused was acquitted and the seized articles were directed to be returned to him. In that case the accused made a confession in the course of the investigation and the complainant contended that in view of his own confession, the property should not be returned to the accused. The learned Judge held that proceedings under Section 517, Cr. P. C. being of a Civil nature, there is no bar to the admissibility of the confession of the accused for the purpose of determining as to who is the person best entitled to the possession of the seized property. In that case the admission of the accused was duly proved and marked as Ext. P/16. In this case, however, there is no proof of any such admission said to have been made by the accused. The present case has been

disposed of on the footing that the accused denied the recovery. Mr. Murty now wants to call for the police records with a view to make out a case in favour of the complainant. Even if the police papers are called, they will be of no use at this stage without necessary proof of that statement. The application to call for the case diary is therefore, rejected.

12. As already seen this case is distinguishable on facts. I do not express any opinion about the correctness of the proposition that such confession of the accused as found in the police-diary is admissible in a proceeding under Section 517, Cr. P. C.

13. The proceeding under Section 517 is of summary nature and does not decide the question of ownership or title, which has to be decided by the Civil Court. It is open to the complainant to establish his claim to the amount if he is so advised.

There is however, no merit in the present application which is accordingly dismissed.

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