

Jagadananda Patel Vs. Divisional Forest Officer, Bamara Division, and anr.

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SooperKanoon Citation : sooperkanoon.com/535442

Court : Orissa

Decided On : Jun-21-2000

Reported in : 2001CriLJ1997

Judge : P.K. Mishra, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 362 and 482

Appeal No. : Misc. Case No. 2172 of 1999 (in CrI Misc. Case No. 1703 of 1995)

Appellant : Jagadananda Patel

Respondent : Divisional Forest Officer, Bamara Division, and anr.

Advocate for Def. : Addl. Govt. Adv.

Advocate for Pet/Ap. : A.K. Sahoo and ;S.B. Das, Advs.

Disposition : Petition allowed

Judgement :

ORDER

P.K. Mishra, J.

1. Even though Criminal Misc. Case No. 1703 of 1995 Under Section 482, Code of Criminal Procedure (in short, the 'Cr. P.C.') has been disposed of on 12-2-1997, the matter is lingering for more than three years, as several petitions have been

subsequently filed for passing ancillary orders.

2. In the main application Under Section 482, Cr. P.C., the present petitioner had prayed for issuance of a direction to release the articles seized in connection with 2(b) CC Case No. 11 of 1989 (corresponding to T.R. No. 135/90) and for direction regarding issuance of necessary Timber Transit Permit in favour of the petitioner for transportation of seized articles from the spot to the residence of the petitioner. After considering the matter, a direction was given to the opposite parties to release the seized articles under the custody of opposite party No. 1 in favour of the petitioner and for issuance of necessary Timber Transit Permit for transportation of such materials. It was also observed : --

5.... The petitioner, if he still feels aggrieved by the fact that the quality of the seized articles had deteriorated, and if so advised, may file a suit for damages and if such a suit is filed, the same should be disposed of by the appropriate Court in accordance with law. It is, however, made clear that the contention of the petitioner that 100 stacks of fire-wood of the size 30ft. x 3ft x 3ft. had been seized is baseless and cannot be made a cause of action in the suit for damages, if any.

After the aforesaid order was passed, several ancillary orders were passed for the purpose of implementing the order relating to release of the seized articles. However, in spite of all efforts, the petitioner has not been able to take delivery; of the seized articles. The petitioner has, therefore, filed the present application seeking for a direction to opposite party No. 1 to pay the market value of the seized articles.

3. In the decision of this Court reported in (1999) 17 OCR 133 : (2000 Cri LJ 1172) (Fakira Subudhi v. State of Orissa), it was decided that where the State was not in a position to release the seized articles in a criminal case in accordance with the direction of the Court, reasonable compensation can be paid to the person entitled to such seized articles and instead of driving such person to separate suit, compensation had been assessed in the proceeding Under Section 482, Cr. P.C., in order to avoid further litigation. The learned counsel for the petitioner states that similar course may be adopted in the present case.

Learned counsel appearing for the State has, however, submitted that such a course should not be adopted in a miscellaneous petition, as the main case itself has been disposed of and any such direction regarding payment of compensation given at this stage may amount to modification/review of the order and such a course is prohibited in view, of the provisions contained in Section 362, Cr. P.C.

4. Section 362, Cr. P.C., runs as follows : --

362. Court not to alter judgment. -- Save as otherwise provided by this Code or by any other law for the time being in force, no Court, when it has signed its judgment or final order disposing of a case, shall alter or review the same, except to correct a clerical or arithmetical error.

In view of the aforesaid provision, the position is clear that once a criminal case is disposed of, there is no power of altering or reviewing such order. It is, of course, true that ancillary orders can be passed to implement such order, but if any order would have the effect of altering or reviewing the earlier order, such a course must not be adopted in view of specific prohibition contained in Section 362.

5. In the present case, direction had been given to release the seized articles. The counsel for the petitioner has submitted that the seized articles have been completely destroyed or damaged. In the order itself, it had been observed; that it would be open to the petitioner to file suit for damages. If any direction, for payment of compensation is given in the present miscellaneous petition, such a direction would amount to reviewing the earlier order. In such view of the matter, I decline to pass any further order in the miscellaneous case, which is accordingly rejected. It would be open to the petitioner to seek any other appropriate remedy available under any law.