

Malook Singh Tarlok Singh Vs. State

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Court : Punjab and Haryana

Decided On : Mar-29-1972

Reported in : 1972CriLJ1384

Judge : Gopal Singh, J.

Appellant : Malook Singh Tarlok Singh

Respondent : State

Judgement :

ORDER

Gopal Singh, J.

1. This is revision petition by Malook Singh. It is directed against the order of Shri Kulwant Singh Tiwana Sessions Judge. Ferozepore dated October 14. 1971 dismissing the revision petition filed by the petitioner from the order of Shri Harjit Singh, Judicial Magistrate 1st Class. Muktsar dated July 28. 1971 disallowing the application filed on behalf of the petitioner praying for being delivered on sapurdari truck No. PNF 3408 seized by the police in connection with a theft case registered under Sections 457. 380 and 411. Indian Penal Code.

2. By this application, the petitioner claimed that the truck belonged to him and that the same be given to him as sapurdar pending investigation of the case by the police. The Judicial Magistrate took the view that that truck was a property

required in connection with the case in which it had been seized and was also to be produced in a theft case pending in the district of Patiala. The application was rejected. In the revision petition filed against the order of rejection of the application a preliminary objection was raised on behalf of the State that the truck having been seized by the police in course of investigation and there being pending no enquiry or trial by a Court: the Magistrate had under Section 516-A of the Code of Criminal Procedure no power to consider the application of the petitioner. That preliminary objection prevailed and the revision petition was dismissed.

3. The relevant provision of law, under which property seized in course of investigation, can be claimed by an owner on sapurdari is Section 523 and not Section 516-A. The relevant portion of Section 523 runs as follows:

(1) The seizure by any police-officer of property taken Under Section 51. or alleged or suspected to have been stolen or found under circumstances, which create suspicion of the commission of any offence shall be forthwith reported to a Magistrate who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to | the person entitled to the possession thereof or if such person cannot be ascertained respecting the custody and production of such property.

4. As the above reproduced language of Sub-section (1) of Section 523, shows it is that section, under which an application to claim property seized by police can be made to the Ilaqa Magistrate, It is of no consequence, if the application was made by the petitioner under Section 516-A. That section might appear in the heading of the application as an erroneous provision of law, under which the application could be made. The application will nevertheless lie by virtue of the provision of Section 523. Such an application has to be treated as one made under Section 523. It is under that section that Ilaqa Magistrate has power to consider an application claiming property seized during investigation to be given on sapurdari.

5. Had the' attention of the learned Sessions Judge been invited to the provision of Section 523, he should not have disposed of the case on the preliminary objection

raised by holding that no application was competent under Section 516A inasmuch as there was pending no enquiry or trial as referred to in that section. In respect of the offence in course of the investigation of which the property claimed had been seized. The relevant provision under which the present application could be made is Section 523. Thus the application is competent under that section.

6. The learned Sessions Judge having disposed of the revision petition on that preliminary objection did not apply his mind to the merits of the claim for the truck being given on sapurdari to the petitioner. The Judicial Magistrate also has passed a very sketchy order without considering in detail the claim of the petitioner. The application of Malook Singh requires to be considered on merits of his claim based on ownership of the truck seized. That having not been done it is a fit case for remand to the Ilaqa Magistrate for his claim being considered. The application for the truck seized in the case being given on sapurdari to the petitioner be considered on its merits.

7. It is a typical case in which there has been inordinate delay in completion of investigation of the case. The report was lodged as long ago as May 19, 1971. More than ten months have rolled by and I am informed that uptill today the investigation has not been completed and the challan has not been presented to the Court. This is a case of culpable laxity on the part of the Police in not caring to be prompt in completion of investigation of the case. The investigation be completed and the challan of the case be put up to the Court forthwith.

8. The counsel for the parties have undertaken that the parties shall appear in the Court of the Judicial Magistrate 1st Class at Muktsar on April 17, 1972.