

Darshan Lal Vs. State

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Court : Delhi

Decided On : Dec-18-1967

Reported in : 4(1968)DLT72

Judge : I.D. Dua, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 523

Appeal No. : Criminal Revision Appeal No. 481D of 1967

Appellant : Darshan Lal

Respondent : State

Advocate for Pet/Ap. : C.V. Prem,; V.D. Misra and; N.N. Bhardwaj, Advs

Judgement :

I.D. Dua, J.

(1) In this case, the learned Magistrate made an order on 3rd May, 1937 directing truck No. D.L.L. 1592 to be given on sapurdari in the sum of Rs. 25,000.00 to Shri Dershan Lal pending the disposal of the proceedings before him. It was stated before the learned Magistrate that Darshan Lal had purchased this truck from one Swarn Kumar Kohli in December, 1966. It appears that later Mr. Girdhari Lal approached the Court of the learned Magistrate saying that this truck in fact belonged to him. Now by this time, it so happened, that the learned Magistrate

Shri Amba Parkash, who had passed the original order, was succeeded by Shri P. Y. Jaikrishanan. the learned Magistrate on 27th July, 1967 directed Darshan Lal. Sapurdar of the truck in question, to produce the same in Court for the purpose of handing it over to Girdhari Lal. By means of a separate order, the said Magistrate had after going into the merits considered Girdhari Lai to be the legal owner of the truck in question and he actually went to the length of observing that Darshan Lal had failed to produce any documentarv evidence showing his title to the said truck. Girdhari Lal was accordingly appointed a sapurdar of this truck on furnishing security for a sum of Rs. 25,000.00.

(2) The matter having been taken before the learned Additional Sessions Judge, he has recommended to this Court that the order dated 27th July, 1967 be cancelled, being without jurisdiction, because the criminal Court has no power to review its previous order. In the order of recommendation, the learned Additional Sessions Judge has referred to the following two decisions, (i) Lakshnichand Rajmal v, Gopikisan Balmukund and (ii) Muneshwar Bux Singh v. State.

(3) The counsel for Girdhari Lal and Darshan Lal have addressed elaborate arguments before me pressing their rival claims. The State counsel has, however, kept himself aloof from the controversy because, according to him. the truck has to be handed over to someone as a sapurdar. It is nto understood why the State counsel should nto have assisted this Court with the point of view of the State on the legal position and also on the desirability of one of the two claiments being a proper sapurdar, It is nto as if two private parties are fighting their bettle in which the State is wholly uninterested. This Court would have liked to know the views of the State on the law point at least.

(4) The learned counsel for Girdhari Lal has very strongly argued that the prior order having been made in his absence, he is entitled to be heard on the question as to who should be made a sapurdar of this struck and on what terms. It may be pointed out that so far as the amount of Rs. 25,000.00 is concerned, there is no controversy and both the parties are satisfied with this amount. The counsel for the State has of course ntohing to say even on this aspect.

(5) Shri Darshan Lal's counsel has, however, contended that the Magistrate at this stage is not concerned with the title to the property, but all that he has to see is as to who is entitled to the interim possession of the property and that a person should not lose possession of the property if he is not supposed to be guilty of any offence and that prima facie he is entitled to be restored with the possession, for, the question of title can only be determined by a civil Court.

(6) It appears to me that the learned Magistrate has not applied his mind correctly to the real legal position whereas the first order suffers from excessive brevity, the second order does not really grasp the real point which calls for determination under section 623, Cr. P. C. The facts which require looking into and investigation in criminal proceedings in this case are undoubtedly somewhat complicated and the two decisions cited may not provide a clear-cut precedent to serve as a safe guide for making a suitable order in the present case. The earlier order required the sapurdar to produce the truck whenever required as, in the final analysis, the custody was of the Court. It was accordingly competent for the Court to have the truck produced and then to make an alternative arrangement for its safe custody. The power of the Court for the purpose of the interim custody of a property in respect of which an offence is alleged, is fairly wide and section 523, Criminal Procedure Code merely gives broad guidance.

(7) I would, therefore, quash both these orders and send the case back to the learned Magistrate to hear both sides affected and then come to a proper decision in accordance with law in the light of the observation made above. Parties are directed to appear before the learned Magistrate on 26th December, 1967. It is stated at this stage that the learned Magistrate may like to stick to his own order and, therefore, the case may be sent to some other Magistrate. I am afraid. I cannot uphold the view that the Magistrate performing judicial functions would be influenced by any such matter of prestige and I have no doubt that he would apply his judicial mind to the facts of the case in the light of the arguments addressed before him and make an appropriate order.