

Nasib Singh Vs. State

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Court : Delhi

Decided On : Aug-07-1973

Reported in : 12(1976)DLT230; 1973RLR684

Judge : R.N. Aggarwal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 525; [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 459

Appeal No. : Criminal Reference No. 36 of 1973

Appellant : Nasib Singh

Respondent : State

Advocate for Pet/Ap. : J.K. Pruthi,; R.K. Makhija and; Charanjit Talwar, Advs

Judgement :

R.N. Aggarwal, J.

(1) The facts and circumstances giving rise to this petition for revision are : Ambassador car No. Dlk 6717 model 1963 belonging to P.R. Mehra was stolen from the parking bay of Paras cinema on 22nd January, 1972. Shri Mehra lodged a report at the P.S. Kalkaji which was registered under P.I.R. No. 55 dated 22nd January, 1972 under section 379 IPC. The report was filed as untraced. The said car was insured with the National Employers Mutual General Insurance

Association Limited. The insurance company paid the claim of Shri Mehra for the loss of the car.

(2) On 25th July, 1972, Nazir Ahmad accused was arrested. On information given by Nazir Ahmad, Ambassador car bearing registration No. Mhn 1523 was seized from Nasib Singh from Kashmir, Dist. Nainital. The investigation revealed that Nazir Ahmad had sold the car Mhn 1523 to Jai Bhagwan who further sold it to Prem Sagar who in turn had sold it to Nasib Singh on 23rd June, 1972 for Rs. 16,000.00. The certificate of registration of the car Mhn 1523 was seized from Nasib Singh. On an enquiry from the Regional Transport Office, Nagpur it was found that vehicle No. Mhn 1523 was purchased by the registered owner Duli Ram and the said registration number was of a tractor and not of a car. On an examination of the Ambassador car in question, it was found that its chassis number and engine number had been tampered with. The chassis number of the Ambassador car Dlk 6717 was lii 125969. On resuscitation, the officer-in-Charge of the Photo and Scientific section, C.I.D., Crime Branch, Delhi found that the No. 425989 found embossed on Mhn 1523 was in fact 111-125269.

(3) The insurance company made an application to Shri K.B. Andley, Addl. Chief Judicial Magistrate, for handing over the custody of the car to it on supardari. Shri K B. Andley passed an order that the car be given on supardari to the insurance company. Against the order of Shri Andley, Nasib Singh went in revision to the Sessions Judge. The revision was heard by Shri N. C. Kochhar, Addl. Sessions Judge. Shri Kochhar following A.I.R. 1952 Allahabad 4701 held that a person from whose possession the property was seized and who is not found to have committed any offence such as would render his possession unlawful, is the person entitled to the possession of the property. Shri Kochhar has accordingly made a recommendation to the High Court that the order of Shri Andley be set aside and the car in question be given to Nasib Singh on his executing the supardari nama in the sum of Rs. 20,000.

(4) It may be stated that there has been a little change in the circumstances of the case since the decision of the case by Additional Sessions Judge. At the time when order was passed by the Addl. Chief Judicial Magistrate and Shri Kochhar,

the case had not been filed in the court. The challan has now been filed by the Police in the court.

(5) Sections 516A to 525 in Chapter 43 of the Criminal Procedure Code deal with the power of court in the matter of disposal of property, Sections 515A and 517 deal with cases which have actually come up before the criminal court for enquiry or trial. While section 516A enables a Magistrate to provide for the interim custody of goods pending the conclusion of the enquiry or trial. Section 517 provides for the disposal of property after enquiry or trial is over. Section 523 applies to a property which is seized by the Police under Section 51 or which is suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence. In such a case the Police are required to report such seizure to a Magistrate and the latter can make an order as to its disposal. Section 523 provides that the Magistrate may deliver the property to the person entitled to the possession thereof or he may make any such order as he thinks fit respecting the disposal of such property. It may be stated that the impugned order was made under section 523 Cr. P.C. The relevant provision which would now be applicable is section 516A. Under this section, the court has not to investigate and decide the question of title or ownership of the rival claimants to the property. Only the question of possession at the property of the time the case started has to be gone into and decided before passing an order for the custody under that section. The circumstances of the case in hand prima facie show that the car in question was a stolen property, and its original registration number was Dlk 6717. The car Dlk 6717 before it was stolen was in possession of P.L. Mehra. It may well be that the possession of Nasib Singh was not unlawful but the question that arises for consideration is whether the possession should be given to Nasib Singh in preference to its rightful owner. To my mind prima facie on the known facts the possession must be given to the rightful owner in preference to the person in whose possession the property was found.

(6) The learned counsel for the petitioner strongly relied on Purshotam Das Banarsi Das v. State. In the cited case it was held-'A Magistrate is not a civil court and has no power to decide disputes about title. There is nothing in S. 523 to authorise a Magistrate to decide which party is the rightful owner of the property.

His enquiry is limited to finding which person is entitled to the possession. Once he ascertains the person from whose possession the property was seized, he must hold him to be entitled to its possession unless, his possession was unlawful.' Chitale in volume 3 of commentary on the Code of Criminal Procedure at page 3563 has observed that latter part of the proposition in Purshotam Das Banarsi Das (supra) is too sweeping in as much as in some cases for example, where property is stolen, even an innocent transferee of the property will not be entitled to possession of it as against the real owner. I am inclined to agree in the observations of the commentator. Section 519 Cr. P.C. provides that where any person is convicted of any offence which includes or amounts to theft or receiving stolen property and it is proved that any other person has bought the stolen property from him without knowing or having reason to believe that the same was stolen, and that any money has on his arrest been taken out of the possession of the convicted person, the court may on the application of such purchaser and on the restitution of the stolen property to the person entitled to the possession thereof, order that out of such money not exceeding the price paid by purchaser be delivered to him. The expression 'entitled to the possession' occurs in sections 517, 519 and 523. It is clear from a reading of the provision of Section 519 that where property is found to be stolen property and at the same time found to have been purchased by another in good faith for value, the person entitled to possession of the same in such a case is the person who originally lost possession of the property in consequence of theft or misappropriation. and the other person who subsequently purchased the property is only entitled to be compensated. There is no doubt that sections 517 and 519 contemplate cases where the order with regard to the property is passed on the conclusion of the trial. To my mind, the expression 'entitled to possession' in section 523 should be given the same meaning. If the court finds that the property is stolen then the possession of it should be restored to its rightful owner in preference to the person in whose possession it was found notwithstanding that the possession of that person was not unlawful.

(7) In *A.K. A.R.A. Chettyar v. Ma Saw Hla*, Mr. Justice Mackney held :-

'WHERE the known facts plainly show that the property has been stolen, it would be intolerable to allow the person in whose possession the property is found to retain it as against the rightful owner and force the latter to a civil suit for its recovery if the accused absconds.'

(8) I would prefer to follow the rule of law laid down in the cited authority.

(9) On the facts and circumstances of this case, I am of the view that the custody of the car should be given on supardari to the insurance company. The result is that I decline to accept the reference and the petition is dismissed.

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