

Ashok Kumar Vs. State

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Court : Delhi

Decided On : May-07-1984

Reported in : 26(1984)DLT82; 1984RLR686

Judge : H.L. Anand, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 652 of 1983

Appellant : Ashok Kumar

Respondent : State

Advocate for Pet/Ap. : C.L. Horsimhan,; O.P. Dutta,; V.D. Chopra and;

Judgement :

H.L. Anand, J.

(1) These petitions. Cr. M(M) 652/83, by Ashok Kumar, under Section 482 of the Code of Criminal Procedure, and Cr. R. 150/83, by Sunil Gupta and another, under Section 397 read with Section 401 of the Criminal Procedure Code, arise out of a contest between the petitioners for the temporary custody of an imported Vcr during the pendency of prosecution arising out of Fir No. 79/83 lodged by Ashok Kumar alleging theft to to his Vcr of which he suspected, according to the Fir, Sunil Gupta s/o Suresh Paul Gupta. Ashok Kumar resides in House No. J-59,

Rajauri Garden and Sunil Gupta and his father reside in J-60, Rajauri Garden and are, therefore, the next-door neighbours. Pursuant to the investigation, the Vcr was recovered from the house of Sunil Gupta. Ashok Kumar sought its temporary custody from the court of the learned Metropolitan Magistrate and by an order of April 27, 1983, the learned Magistrate, on a perusal of the police report, directed that the same be given on sporadic to Ashok Kumar in the sum of Rs. 20,000.00 with a direction to produce it as and when required. Sunil Gupta, who had also sought its temporary custody, challenged the order by a revision in the Sessions Court and the learned Addl. Sessions Judge by an order of April 28, 1983 declined to interfere. Sunil Gupta challenged this order in his petition to this Court (Cr. R. 150/83) and while admitting the petition, this court stayed the operation of the order of the learned Metropolitan Magistrate, by an order of May 19, 1983. Meanwhile, pursuant to the Metropolitan Magistrate's order, Ashok Kumar had submitted the necessary bond and the delivery of the Vcr had been made to him in terms of the order of the learned Metropolitan Magistrate made on April 27, 1983. When an intimation of the stay order was received by learned Metropolitan Magistrate, he made another order on May 25, 1983, apparently behind the back of both the parties, whereby he cancelled the bond and directed the police 'to get the Vcr in custody'. The learned Metropolitan Magistrate apparently intended to give effect to the stay order of this court even though the order sought to be stayed had already been carried out.

(2) The only question for consideration is as to the party who would in the circumstances be entitled to a temporary custody of the Vcr and as to the conditions subject to which such an order should be made

(3) The Vcr is an imported item. Neither of the parties claim to have imported it. Both claim to have purchased from someone or the other who had legally acquired it from some one who had made its legal importation, The investigation has since concluded and a challan is scheduled to be filed shortly, if it has not been already filed. Counsel for the Delhi Administration, to whom notice was also issued, disclosed that the documents relied upon by both the parties in support of their competing claim of ownership were found to be either 'forged or discrepant' and there is, therefore, considerable doubt if the Vcr had been legally acquired by

either of the parties. The learned Metropolitan Magistrate gave its custody to Ashok Kumar apparently because Ashok Kumar had complained that it had been stolen from his house and had suspected Sunil Gupta and the Vcr was recovered from the house of Sunil Gupta claims that the report was a false one and had been made to falsely implicate him and that Ashok Kumar had known that Sunil Gupta had the VCR.

(4) Ordinarily, temporary custody of property is given to the person from whose possession it is recovered by the police unless prima facie it appears that the possession was a tainted one and the property had been obtained by the commission of the offence, during the trial of which custody is sought. In ordinary cases of theft, custody of such property is temporarily given to an innocent party, who is found in possession of it, or to the person who is the victim of the crime, which resulted in the deprivation of the property. The accused in such cases rarely claims the property as belonging to him. This is one of the unusual cases where both parties are not only next door neighbours but are men of some status and position and both claim right to the property through lawful purchase, even though the documents produced by both have, in the course of investigation, been prima facie found to be forged or discrepant and there is, therefore, considerable doubt with regard to the basis on which they claim their right to the property.

(5) The property was admittedly recovered from Sunil Gupta. He also Claims title to it. True, the document on .the basis of which he claims title has been prima facie found, to be discrepant or forged but the claim of Ashok Kumar suffers from the same. infirmity, on the basis of police investigation. It was not disputed that large number of VCRs have been imported legally or otherwise and have been and are being freely sold in the market. In the ordinary course of events, either of the parties could have acquired it having regard to their status and means. It would, therefore, be reasonable to give preference to the party from whose possession it was recovered, even though such an order must be made conditional on the party depositing a substantial amount in addition to the usual bond so that in case it is eventually found that it was the property of the other party, he could be suitably compensated and the trial court is able to make appropriate directions with regard to disposal of the deposit.

(6) I would, therefore, set aside the order of the learned Addl. Sessions Judge, by which he has affirmed the order of the learned Metropolitan Magistrate, even though that order itself had been cancelled by the learned Metropolitan Magistrate and direct that the temporary custody of the Vcr be given to Sunil Gupta on his furnishing a bond in the sum of Rs. 20,000.00 with one surety in the like amount to the satisfaction of the Registrar of this Court undertaking to produce the Vcr as and when required by the trial court subject, however, to the conditions that Sunil Gupta would not transfer its possession to any one and deposits a sum of Rs. 10,000.00 in any bank in a fixed deposit in the name of the Registrar of this Court for a period of one year. The disposal of the amount so deposited and the interest that would be accrued on it would abide the direction that may be made by the trial court on the conclusion, of the proceedings or otherwise on a joint request by both the parties.

(7) CR. R. 150/83 and Cr.M(M)652/83 are disposed of in these terms.