

M.V. Ramankutty Vs. State

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Court : Kerala

Decided On : Sep-05-1969

Reported in : AIR1970Ker191; 1970CriLJ1103

Judge : M.U. Isaac, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 51 and 523

Appeal No. : Criminal Misc. Petn. No. 502 of 1969

Appellant : M.V. Ramankutty

Respondent : State

Advocate for Def. : State Prosecutor

Advocate for Pet/Ap. : K. Kunhrama Menon and; P. Ramakrishnan Nair, Adv.

Judgement :

ORDER

M.U. Isaac, J.

1. This is a petition under Section 439 of the Code of Criminal Procedure, (wrongly filed as Cr. M. P.) to revise an order of the Sub-Magistrate I, Kozhikode in C. M. P. No. 38 of 1969. That petition was filed for release of a motor car K.L.D. 8488, which was seized by the Police in the course of investigation of a crime. The

petitioner is the registered owner of the car; and it was seized on the ground that it really belonged to the accused, who purchased it with Government money alleged to have been misappropriated by him. The petition was rejected by the Magistrate stating that the police had not produced the car in Court, and that the question of releasing the car would arise only if and when the car was produced in Court.

2. It is not disputed that the seizure of the car was reported to the Court as required by Section 523, Criminal P, C., but the petition was mainly resisted by the police, stating that it was required for the purpose of investigation, and that the Revenue Divisional Officer, had also passed an order directing the police to produce it before him. The order of the learned Magistrate was attacked before me as illegal and amounting to refusal to exercise the jurisdiction under Section 523, Criminal P. C. The learned State Prosecutor sought to support the order on the ground stated by the Magistrate; and he also submitted that the above Section has no application to the case. According to him, this section applies only at the culmination of an action taken by the Police without the accused being charged for any offence.

3. The question raised in the case relates to the scope and applicability of Section 523, Criminal P. C.; and it is of considerable importance. There is some judicial controversy in the matter; and it, therefore, requires examination. Chapter XLIII in the Code of Criminal Procedure deals with disposal of property by a Court. Section 516A, Criminal P. C., relates to property regarding which an offence appears to have been committed or which appears to have been used for the commission of an offence, and produced before any Criminal Court during any enquiry or trial; and it empowers the Court to make such order as it thinks fit for the proper custody of the said property pending the conclusion of the enquiry or trial. Section 517 relates to property concerned in any enquiry or trial; and it empowers the Court to make such orders as it thinks fit for the disposal of the said property. There is no controversy regarding the application of the above provisions. Section 523 reads as follows :--

'523. Procedure by police upon seizure of property taken under Section 51 or stolen :

(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.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit. If such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.'

4. On a plain reading of the above provision, it is obvious that it applies not only to property seized by Police under Section 51, Criminal P. C. or on the allegation or under suspicion that it is stolen, but also to property seized on being found under circumstances which create suspicion of the commission of any offence. Property seized by the Police in the course of investigation of crimes falls under the latter class. A different view was taken by the Allahabad High Court in *Purushottam Das Banarsidas v. State*, AIR 1952 All 470. In that case the learned Judge took the view that Section 523 applied only to property seized by the police under Section 51 or Section 550, Criminal P. C. He further held that it was for the police, who had seized the property under Section 165, Criminal P. C. to dispose of it on their own responsibility; and that a Magistrate was not concerned with the disposal of a property, which was not produced before him or whose seizure was not reported to him.

5. The Madhya Pradesh High Court in *Ganeshi Lal v. S.N. Tiwari*, AIR 1958 Madh Pra 39, dissented from the above view, and held that Section 523, Criminal P. C. applied to property seized by the Police under Section 165. A Division Bench of the Calcutta High Court in *Ajoy Raj Singh v. Raj Bahadur Singh*, AIR 1967 Cal 421, also dissented from the Allahabad decision. The learned Judge stated :

'Section 516-A of the Code empowers the Magistrate to deal with seized property during any inquiry or trial. Section 517 of the Code empowers the Magistrate to deal with the seized property after an enquiry or trial is concluded. Section 523 of the Code empowers the Magistrate to deal with the seized property in all other cases. Dealing with the object of the provision contained in Section 523, Criminal P. C. the Court said : 'The police while making an investigation have power to arrest an accused and to make a seizure. But the Code provides for the production of the accused before the Magistrate within 24 hours and the Magistrate has been given powers to grant bail. Similarly, the Code provides that the police must report the seizure to the Magistrate and the Magistrate has been given power to deal with such seizure. If the Magistrate is deprived of this power the police will be left with arbitrary powers to deal with the seized property during investigation, may be to the detriment of the interest of the person entitled to the possession thereof.'

The above decision has considered the arguments which found favour with the Allahabad High Court; and after referring to a number of decisions of other High Courts, it pointed out that the trend of recent decisions is that Section 523 (1), Criminal P. C is a general provision applicable to all cases, before there is any enquiry or trial. The Gujarat High Court has also taken the same view in Suraj Mohan v. State of Gujarat, AIR 1967 Guj 126. I respectfully agree with this view, and hold that Section 523, Criminal P, C. applies to all cases of seizure of property by the Police, and it empowers the Magistrate to deal with it before there is any enquiry or trial.

6. The next question for consideration is whether the Magistrate has got jurisdiction to pass any order under Section 523, Criminal P, C. regarding property seized by the Police, before its seizure is reported to him, or it is produced in Court. The learned Magistrate has, in the instant case, held that he has no jurisdiction to do so before the property is produced in Court. This view is unwarranted by the Section; and it is clearly wrong. There is an elaborate and instructive discussion by Shelat J. in AIR 1967 Guj 126, on the question whether a police report is a condition precedent to the exercise of the jurisdiction under Section 523. In the above case, an application under Section 523 for return of a motor truck seized by the Police under Section 165, Criminal P. C. was rejected by the Magistrate on the

ground that he had not received any police report about its seizure. The order of the Magistrate was sought to be supported in revision on same ground. Dealing with the obligation of the Police to report forthwith to the Magistrate regarding the seizure of any property, the learned Judge stated :

'These words have a two-fold significance. The first is that the provision gives a clear direction to the police making it obligatory to report the seizure of any Such property to the Magistrate. The second direction is that it shall be reported forthwith. The use of the word 'forthwith' is something more forceful than immediately or soon after the seizure of the property. It contemplates no loss of time. The idea behind it appears to be that no inconvenience or hardship should be caused to any bona fide owner of any such property, and the matter can immediately be considered by the Magistrate having jurisdiction to deal with any such matter. No discretion is allowed to the police in that respect as would justify him to delay in making any such report and if the police required the same for the purpose of any investigation it has got to move the Magistrate for the same. At any rate, the fact about its seizure has to be reported forthwith to the Magistrate, That in a way serves as a check on the police in dealing with any such property seized from any person. The police is thus bound to send a report there and then as it were, about any such seizure to the Magistrate, as required under Section 523(i) of the Code.'

The contention that the Magistrate has no jurisdiction to act under Section 523, Criminal P. C. until a police report regarding the seizure of the property is received by him, was rejected by the Court; and in doing so, the learned Judge said :

In my opinion, it would be perfectly Open to the learned Magistrate to take note or the fact about any such truck having been seized by the police officer and while he may not act upon it at once, it would be his duty to inquire from the police officer and have his report obtained if the police officer so desires to send. It is possible that the police officer may have forgotten to send such a report, and on an intimation from the Magistrate on any such information received from the owner of the property involved, the police officer may send a report, and the Magistrate would then be justified in passing the order as he thinks fit with regard to the

disposal of any such property or the delivery of such property to the person entitled to the possession thereof under Section 523 of the Code. If, however, the police officer does not choose to send in spite of the intimation sent to him, the party claiming the property cannot be made helpless having no remedy by reason of the fault or default on the part of a police officer in making a report which he was bound to make forthwith on seizing the property under Section 523 (i), or the Criminal Procedure Code. If the Magistrate was powerless to do so, as is sought to be urged, it may well happen that the police would retain it till at any rate the charge-sheet happens to be sent in that particular case to the Court of the Magistrate, and thereby cause considerable hardship to the rightful claimant, and even the property would suffer damage by remaining unused for any indefinite time. The police officer has no power or authority to deal with it in any manner and it is therefore that the legislature required him to report to the Magistrate, so that suitable orders can be passed by the Magistrate under Section 523 (i) of the Code.'

The learned Judge set aside the Order of the Magistrate, and directed him to proceed with the application for the return of the property and dispose of the same as required by Section 523, Criminal P. C., even in the absence of any police report regarding its seizure. I respectfully agree with the views expressed in the above decision regarding the scope and applicability of Section 523, Criminal P. C., subject however to one observation, namely, that this Section does not prevent the Police from releasing a property to the person from whom it was seized, if they find in the course of investigation that the seizure was unjustified; but when once the Court is moved under Section 523, Criminal P. C. the Police must hold the property subject to the orders of the Court

7. Another decision to which reference may be made in this context is that of the Madhya Bharat High Court in *Ramlal Hazarimal v. Hiralal Ramalal*, AIR 1953 Madh Bha 241. In that case money said to have been misappropriated by the accused, who was a Municipal employee, was seized by the Police from the accused's father. The Police did not produce the money in Court; but it was handed over to the Municipality. The accused was finally acquitted; and then the father applied for return of the money seized from Mm. The application was

rejected on the ground that neither Section 517 nor 523, Criminal, P. C. applied to the case, and that at any rate, as the property had been already released by the Police, there was no scope for any action by the Court under any of the above provisions. The contention was rejected, and dealing with the scope of Sections 516-A, 517 and 523, Criminal P. C., the Court said :

'On consideration of all these provisions it is plain that after property is seized by the Police, orders for its final disposal can only be passed by the Court and the Police are expected to hold the property subject to the orders of the Magistrate. Therefore if the property is with the Police, the Magistrate alone has got jurisdiction to pass orders.'

I agree with the above statement, but subject to the observation which I have made above.

8. The Court also held that the fact that the Police wrongly handed over the property to a person who claimed it does not affect the Court's jurisdiction to act under Section 523, Criminal P. C., and it directed the Police to recall the money from the Municipality and produce the same before the Magistrate for being disposed of under Section 523, Criminal P. C. I reserve my opinion on the question whether the Court can act under the above Section, after the Police have already handed over the property to a person who claimed it, though the disposal by the Police was wrong. The direction to produce the property in Court for being disposed of under Section 523, Criminal P. C. would indicate an assumption that the production of the property in Court is necessary for passing the necessary orders under this Section. In my opinion, such an assumption is not warranted by the language of the Section.

9. In the result, I set aside the order of the Magistrate, and direct him to pass such orders as he thinks fit respecting the disposal of the motor car seized by the Police as expeditiously as possible after hearing the interested parties.