

P.V. Joseph Vs. State

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Court : Kerala

Decided On : Sep-14-1977

Reported in : 1978CriLJ1206

Judge : Narayana Pillai, J.

Appellant : P.V. Joseph

Respondent : State

Judgement :

ORDER

Narayana Pillai, J.

1. Petition under Section 482 of the Cr. P.C. (II of 1974), to quash an order passed by the Chief Judicial Magistrate, Ernakulam, and to give the petitioner, Joseph, custody of two film boxes, seized in the case.

2. Joseph had approached the Judicial Magistrate, Second Class, Ernakulam, with a complaint that one Raj an had cheated him of the film boxes. After they were seized in that case he moved for their custody. After hearing him and Rajan, the Magistrate allowed him to have their custody. Thereafter Rajan filed a petition before the Chief Judicial Magistrate, Ernakulam, complaining that Joseph had cheated him and committed breach of trust in respect of the identical film boxes. The Chief Judicial Magistrate ordered investigation of that complaint. During

investigation police seized the film boxes from Joseph. Then, both Joseph and Rajan, by two separate petitions, applied before the Chief Judicial Magistrate for their custody. Relying on *Balaji v. State of Andhra Pradesh* 1976 Cri LJ 1461 (Andh Pra) and *Nanno Mal v. Sher Mohammad Khan* 1976 Cri LJ 1783 (All) the Chief Judicial Magistrate found that under Section 457 of the Criminal Procedure Code order regarding custody of property could not be passed before completion of investigation and relying on *Ambika Roy v. State of West Bengal* 1974 Cri LJ 1002 (Cal) that an order under that section could not be passed when the property seized was not produced before court, and dismissed the petitions. The correctness of that order is now challenged.

3. In *Balaji's case* 1976 Cri LJ 1461 the Andhra Pradesh High Court held that the power under Section 457 could not be invoked by a Magistrate who could not hold enquiry or trial of the case in which the property was involved and in *Nanno Mal's case* 1976 Cri LJ 1783 the Allahabad High Court held that it could not be invoked during investigation and that if there was enquiry or trial before completion of the same. Both the decisions said that one distinction between Section 457 of the new Code and the corresponding Section 523 of the predecessor Code, V of 1898, was that while Section 523 authorised Magistrate to pass order even during investigation Section 457 did not authorise that. Two more distinctions were noted in *Balaji's case* 1976 Cri LJ 1461 (Andh Pra). They were that while under Section 523 police officer seizing property had a duty to report to court about it there was no such duty cast on him under Section 457 and that while under Section 523 if the police officer who seized property and reported it to Magistrate kept the property in his possession Magistrate could not pass an order, under Section 457 the Magistrate could do it.

4. In *Ambika Roy's case* 1974 Cri LJ 1002 the Calcutta High Court held that the power under Section 457 could be invoked even during the stage of investigation. It was observed there that the words 'such property is not produced before a criminal court during an enquiry or trial' appearing in the section did not constitute 'a bar but a condition precedent, not a disqualification but a qualification : and not an exception but an essential ingredient forming the mainspring of such application.'

5. It is true that in Ambika Roy's case 1974 Cri LJ 1002 (Cal) the property seized was produced in court but that fact happened to be mentioned in that decision only in stating that it was not produced during enquiry or trial so as to come within Section 457. It was not held there that Section 457 could be applied only if the property seized was produced before court.

6. The words 'such property is not produced before a criminal court during an enquiry or trial' occurring in Section 457 have relation to Sections 451 and 452 of the Code which empower criminal courts to pass orders both during and at the conclusion of enquiry or trial regarding custody and disposal of property produced before them. Those words have been used only to exclude from the operation of Section 457 cases covered by Sections 451 and 452. There is no bar in Section 457 from exercising the power under it at the stage of investigation. Consequently that power can be exercised at the stage of investigation. In that respect there is no difference between Section 457 of the new Code and Section 523 of the old Code.

7. It is true that Section 523 of the old Code provided for police officer reporting to Magistrate forthwith about seizure of property and that provision is absent in Section 457 of the new Code. But that does not make any difference because as remarked by the Law Commission in its 41st report besides Sections 51 and 550 of the old Code corresponding to Sections 51(1) and 102 of the new Code there are various other sections - like Section 165(5) - in the Code empowering seizure by police officer of property during investigation and the police officer reporting the same to magistrate.

8. Section 457 in the new Code is wider in scope than Section 523 in the old Code because while Section 523 restricted its operation to seizures under Sections 51 and 550 of the old Code Section 457 applies to all kinds of seizures under the Code.

9. The report of seizure of property need not necessarily be to a Magistrate competent to hold inquiry or trial of the case in which the property is involved. As it is the report that is made to him of seizure and the fact that the property seized is not produced before court in an enquiry or trial which give him jurisdiction to act

under Section 457 the power conferred by that section can be exercised even by a Magistrate who has no power to hold enquiry or trial of the case in which the property is involved.

10. Giving the words of Section 457 their ordinary meaning only two conditions have to be fulfilled for acting under the section and they are - that seizure of property is reported to Magistrate and that the property is not produced before the criminal court in an enquiry or trial. If those conditions are satisfied irrespective of the question whether the property is produced before the Magistrate or not and irrespective of the question whether he is competent to hold inquiry or trial of the case in which the property is involved or not the Magistrate can at the stage of investigation itself pass order under Section 457. As that interpretation based upon the literal meaning of the words of the section does not lead to results which are absurd or confusing or inconsistent I consider that as right. I regret I cannot agree with the decisions in Balaji's case 1976 Cri LJ 1461 (Andh Pra) and Nanno Mal's case, 1976 Cri LJ 1783 (All).

11. The Judicial Magistrate of the II Class has already passed an order in favour of Joseph regarding custody of the film boxes and that order is binding upon Rajan and is in force, After the passing of that order Rajan's approach to the Chief Judicial Magistrate, Ernakulam, to get custody of the identical film boxes without challenging the correctness of that order was clear abuse of the process of court.

In the result the order passed by the Chief Judicial Magistrate, Ernakulam, in so far as it is against the petitioner, Joseph, is quashed and the two film boxes seized in the case are directed to be delivered to him on his producing a kaichit with condition incorporated in it that he would produce the same whenever called for by the Chief Judicial Magistrate.