

Timothy Vs. State of Kerala

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Court : Kerala

Decided On : Dec-16-1986

Reported in : 1987CriLJ1313

Judge : Chettur Sankaran Nair, J.

Appellant : Timothy

Respondent : State of Kerala

Judgement :

ORDER

Chettur Sankaran Nair, J.

1. These petitions are moved by a person claiming to be the registered owner of a lorry, bearing Registration No. K.R.R. 2313. According to him, the lorry was transferred in his name on 3-5-1983 under a duplicate registration book, the original having been lost. He would say that the lorry was operating inside the State of Kerala and that it has no permit to operate outside the State. On a complaint by one Anjaneyelu, a resident of Pidugurala, Guntur District in Andhra Pradesh, the lorry was seized by the Sub Inspector, Pidugurala with the assistance of the Trichur police, in the belief that it was involved in the commission of an offence.

2. Anjaneyelu's complaint to the police appears to be that one George had received a consignment of rice from him to be transported to Kerala and that it did not reach its destination. George was believed to be the driver of the lorry seized. The seizure was reported to the Chief Judicial Magistrate, Trichur and it was produced before him. The petitioner prayed for release of the lorry. The Magistrate declined the release on the grounds, that Sections 451 and 452 of the Code of Criminal Procedure had no application and that Section 457 of the Code could not be invoked, because according to him, he had no jurisdiction to deal under that section. In his view, such an application could be moved only before the Magistrate, who would have jurisdiction to hold inquiry or trial.

3. Counsel for petitioner submits that the understanding of the section by the Chief Judicial Magistrate is erroneous, and that there is no inquiry or trial pending before any other Magistrate. The counsel would say that the Magistrate of competent jurisdiction, is the Magistrate to whom the seizure is reported. To support his contention, counsel referred to a decision of this Court in *P. V. Joseph v. State of Kerala* 1977 Ker LT 869 : 1978 Cri LJ 1206. this Court held that only two conditions are necessary to attract jurisdiction under Section 457 Cr. P.C. The seizure should be reported to the Magistrate, whose jurisdiction is invoked and the property should not have been produced before a court for purposes of inquiry or trial.

4. The meaning of the section is not ambiguous. The section confers jurisdiction on the Magistrate, 'whenever, seizure of property by police under the Code is reported to such Magistrate'. This condition, is subject to the qualification, that an inquiry or trial is not pending. The expression 'is not produced before a criminal court during inquiry or trial', can be read only as a qualifying clause excluding the categories dealt under Sections 451 and 452. I say so, because one does not envision a situation where property seized is produced before one Magistrate, and is again seized and reported to another Magistrate. What is validly seized and produced before a Magistrate, cannot be seized again.

5. As stated hereinbefore, Section 457 refers to cases of seizure under the Code and reported to a Magistrate. Section 451 deals with cases where property is

produced during any inquiry or trial. Section 452 deals with cases when an inquiry, or trial is concluded. (Underlining Supplied) Therefore, Section 457 deals with a situation where an inquiry or trial is neither pending nor concluded. Otherwise put, it deals with cases in the pre-trial or pre-enquiry stage.

6. In the instant case, the Magistrate to whom the seizure of property is reported is the Chief Judicial Magistrate, Trichur and no inquiry or trial is pending. The matter is still under investigation. It follows that the order of the court below is erroneous and it is set aside.

7. I direct the Chief Judicial Magistrate, Trichur to release the lorry (K.R.R. 2313) to the petitioner on his furnishing proof of ownership to the satisfaction of the said Magistrate, The petitioner shall produce the lorry as and when called upon to do so by the investigating agency or the court holding an inquiry or trial. Cri.R.P. 235/1983 is allowed to the extent indicated hereinbefore.

8. In Cri.M.C. 419/1983, the petitioner challenges the seizure itself. But, during the hearing, counsel for petitioner did not press the matter, advisedly for good reasons. Cri.M.C. 419/1983 is accordingly dismissed.

Order accordingly.