

State Vs. Rasul Khan Chandkhan

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Court : Gujarat

Decided On : Jun-17-1960

Reported in : AIR1961Guj4; 1961CriLJ54

Judge : Raju, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 170(2), 516-A and 517(1)

Appeal No. : Criminal Ref. No. 8 of 1960

Appellant : State

Respondent : Rasul Khan Chandkhan

Advocate for Def. : H.M. Chinoy, Adv.

Advocate for Pet/Ap. : H.M. Chokshi, Govt. Pleader

Disposition : Reference rejected

Judgement :

ORDER

Raju, J.

1. This is a reference by the Additional Sessions Judge of Kaira recommending that the order passed by the First Class Magistrate, Nadiad, rejecting the

application by the prosecution for the return of the Muddamal Liquor to the Police for being sent to the Chemical Analyser. The prosecution filed an application before the learned Magistrate for the return of the Muddamal liquor to the police in order to enable the police to send the Muddamal to the Chemical Analyser, as the prosecution had only relied on the hydrometer test but in view of the recent ruling of the Bombay High Court it is necessary to get the liquor examined by the Chemical Analyser. The Magistrate was of the view that once the prosecution submitted a chargesheet it is to be considered that the police investigation has been completed. The police cannot resume the investigation. He therefore thought that the request of the prosecution was not supported by any provision of law and he rejected the application.

2. The State filed a revision application before the learned Additional Sessions Judge, who thought that this was not a case where the prosecution is seeking to lead any additional evidence, but as the prosecution have realised that hydrometer test alone was not sufficient and it was necessary to have the liquor tested by the Chemical Analyser it would be in the interest of justice to return the Muddamal to the police for being sent to the Chemical Analyser. He therefore thought that the order of the learned Magistrate rejecting the application was not correct and therefore referred the matter to the High Court for setting aside the order passed by the learned Magistrate.

3. In my opinion, the view taken by the learned Magistrate is correct. Under Section 170 of the Criminal Procedure Code, when an officer-in-charge of a Police Station finds that there is sufficient evidence against a person he should forward the accused under custody to a Magistrate empowered to take cognisance of the offence upon a police-report and he should further send to such Magistrate any weapon or other article which it may be necessary to produce before the Magistrate. Once an article or a document comes into the custody of a Court, it cannot be returned excepting according to rules of law. Rules regarding the disposal of property produced before any Criminal Court are found in Sections 516A and 517 (1), Criminal Procedure Code. Muddamal articles produced under Section 170 of the Criminal Procedure Code before the Criminal Court cannot be returned to the police. In view of the provisions of the Criminal Procedure Code it

is not proper for a Criminal Court to return to the police the articles produced before it under Section 170 (2), Criminal Procedure Code.

4. The reference is therefore rejected.

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