

Chhutanlal Vs. State

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Court : Rajasthan

Decided On : May-10-1967

Reported in : AIR1968Raj70; 1968CriLJ385

Judge : C.B. Bhargava, J.

Acts : [Police Act, 1861](#) - Sections 1, 25 and 26

Appeal No. : Criminal Revn. No. 492 of 1966

Appellant : Chhutanlal

Respondent : State

Advocate for Def. : Sampatraj and; N.M. Kasliwal, Adv.

Advocate for Pet/Ap. : Sagarmal Mehta, Adv.

Disposition : Revision allowed

Judgement :

ORDER

C.B. Bhargava, J.

1. This revision application has arisen in the following circumstances.

2. In Jaipur City, Mst. Bhoori wife of the petitioner is said to have been murdered on the night intervening 24th and 25th July, 1964 while the petitioner was in jail in regard to some other offence. While investigating the case of murder, the police took in its charge the house in which Mst. Bhoori was murdered as also the moveable property then found in the house purporting to act under Section 25 of the [Police Act, 1861](#), (hereinafter called the Act). An inventory of the said property was furnished to the Additional District Magistrate, Jaipur who directed the property to remain in police custody. Thereafter the petitioner from jail submitted an application on 3rd December, 1964, to hand over the said property to his second wife Mst. Lilita. This application was addressed to the Additional Munsif Magistrate, Jaipur City who ordered the property to be delivered to Mst. Lilita on 6th January, 1965. A revision application was preferred against the order and on a reference being made, a learned Judge of this Court, set aside the order of the Munsif Magistrate as being without jurisdiction and ordered that the matter should be disposed of by the District Magistrate in accordance with the provisions of Section 26 of the Act. The objection which is now being raised, does not seem to have been then raised. When the matter came up again before the District Magistrate, he issued a proclamation regarding the entire property both moveable and immoveable as required by Section 26 of the Act. For the interim management of the house and realisation of rent he appointed a receiver. Being aggrieved by the order of appointment of the receiver, the petitioner has preferred the present revision application, and it has been contended on his behalf that under Section 25 of the Act, the police is not empowered to take charge of the immoveable property and as such the District Magistrate had no jurisdiction to issue any proclamation with regard to it.

Section 25 of the Act is as follows: 'It shall be the duty of every police officer to take charge of all unclaimed property, and to furnish an inventory thereof to the magistrate of the District. The police officers shall be guided as to the disposal of such property by such orders as they shall receive from the magistrate of district.'

According to the definition in the interpretation clause, the word 'property' shall include any moveable property, money or valuable security. The contention for the petitioner is that although the word 'include' is generally used to enlarge the

meaning of words or phrases occurring in the body of the statute, but in the present case the context of the Act shows that it was not employed for the purpose of adding to the natural significance of the word 'property' but to restrict its meaning so as to afford an exhaustive explanation. Mr. Kasliwal for the non-petitioner has strenuously urged that according to its ordinary connection property includes both immovable and moveable property and here the word include has an extending force and does not limit the meaning of the term to the substance of the definition. In support he relies on *Calico Mills Ltd. v. State of Madhya Pradesh*, AIR 1961 Madh Pra 257, *S. M. James v. Dr. Abdul Khair*, AIR 1961 Pat 242, *Sujaniram Daryaosingh v. Lal Shvamshah Bhagwan Shah*. AIR 1956 Nag 67,

3. In *Dilworth v. Commr. of Stamps*, 1899 AC 99, Lord Watson observed:

'The word 'include' is very generally used in interpretation clauses in order to enlarge the meaning of words and phrases occurring in the body of the statute; and when it is so used these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also those things which the interpretation Clause declares that they shall include. But the word 'include' is susceptible of another construction, which may become imperative, if the context of the Act is sufficient to show that it was not merely employed for the purpose of adding to the natural significance of the words or expressions defined. It may be equivalent to 'mean and include' and in that case it may afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions.'

4. The question, therefore, is how the word 'include' should be construed in the definition of 'property' in the Act whether as a word of enlargement or of restriction. Now it is well-known that when a particular definition 'includes' certain things it is to bring in other matters that would not properly come within the ordinary connotation of the word or expression or phrase in question. Did the Legislature intend to widen the scope of 'property' by enumerating 'any moveable property' in the inclusive definition? In my opinion 'no' because obviously every moveable property is included in the ordinary connotation of the word 'property' and there could not be any doubt or difference of opinion on this point so as to require any clarification by

the Legislature. I am of the view that here the word 'include' is equivalent to mean and include as pointed out by Lord Watson in the aforesaid decision. The word 'property' in the Act means any moveable property and also includes money or valuable security.

5. The Act was enacted to reorganise the Police and to make it more efficient instrument of the prevention and detection of crime. It could not have been the intention of the Legislature that Police be empowered to take charge of unclaimed immovable property also and claims about it be decided summarily by the District Magistrate under Section 26 of the Act. In regard to unclaimed moveables it is however, understandable because if it is not immediately taken in its charge by the Police it might be stolen or misappropriated before its rightful claimant gets it.

6. Many States in India have their own Police Acts and in most of them the definition of 'property' is the same as in the Central Act. However, Section 100 of the Calcutta Police Act of 1866 which is analogous to Section 25 of the Act authorises the Police to take charge of unclaimed moveable property.

7. Similarly various States including the State of Rajasthan have made rules in exercise of the powers conferred by Sections 45 and 46 of the Police Act 1861 and they contain provisions with regard to custody and disposal of moveable property only. This further strengthens the conclusion that immovable property is not included in the 'property' as defined in the Act.

8. No decision directly on the point has been cited before me, yet the following observations of Currie J., in *Abdul Shakur v. Mahadev Parshad*, AIR 1930 Lah 539, amply support the view, which I have taken. The learned Judge after quoting Section 25 of the Act observed:

'From this it will be seen that what is contemplated is that a police officer shall take charge of all unclaimed property and shall furnish an inventory to the Magistrate of the district, and take his orders for disposal thereof. That is to say the initiative is to be ordinarily with the police. 'Property' is defined in Section 1 as including any moveable property, money or valuable security and clearly the provisions of Section 25, Police Act, would not apply to immovable property.'

9. I have, therefore, no hesitation in coming to the conclusion that the word 'property' as defined in the Act is not capable of being construed in the manner suggested by the non-petitioners and does not include immoveable property and as such under Section 25 of the Act the Police is not authorised to take charge of immoveable property and consequently the District Magistrate has no jurisdiction to deal with it under Section 26 of the Act.

10. This being so the order of appointing receiver for the management of Immoveable property by the District Magistrate in the present case must also fall on the same ground.

11. This would however, not effect the proceedings so far as they relate to moveable property.

12. As a result this revision application is allowed and the order of the DistrictMagistrate appointing a receiver for the immoveable property is set aside and the proceedings relating to such property are quashed.