

Har Deo Vs. State

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Court : Rajasthan

Decided On : Sep-20-1951

Reported in : AIR1952Raj148

Judge : Sharma, J.

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

Appeal No. : Criminal Ref. No. 232 of 1951

Appellant : Har Deo

Respondent : State

Advocate for Def. : R.K. Rastogi, Government Adv.

Advocate for Pet/Ap. : Party in person

Disposition : Reference accepted

Judgement :

ORDER

Sharma, J.

1. The applicant Har Deo claimed an amount of Rs. 575/4/- which were recovered from the possession of his son Bhadur. The proceedings were taken under Section 523 of the Code of Criminal Procedure by the Railway Magistrate, Jaipur

but as after the examination of some of the witnesses, the applicant did not appear in Court on a date to which the case had been adjourned, the Learned Magistrate dismissed Hardeo's application for default, Hardeo went in appeal to the Court of Sessions, Jaipur and the Learned Additional Sessions Judge, Jaipur holding that no appeal lay, but the matter was such in which interference was necessary, treated the appeal as an application for revision and has made a reference to this Court recommending that the order of the Learned Magistrate dated the 18th April 1951 dismissing Har Deo's application for default, be set aside and the Magistrate be asked to pass appropriate orders under Section 523 of the Code of Criminal Procedure, allowing the applicant one more chance to adduce evidence.

2. The applicant has appeared before me. On the other side Government Advocate has appeared. He concedes that the reference is perfectly justified and the order of the Magistrate should be set aside. There can be no doubt that the order of the Magistrate dismissing the application for default cannot be maintained. Under Section 523, the Magistrate is required to make such order as he thinks fit respecting the disposal of the property in questioner 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.

Under Sub-section 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 the property and shall, in such a 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. It would thus, appear that Section 523 is self-contained and the Magistrate has no power to make any order which does not come within one or the other provisions of the said Section. The Magistrate has not been given, any power to dismiss an application of the claimant for default. The order, was, therefore, not legally justified.

3. The reference is accepted, the order of the Learned Magistrate, dated the 18th April 1951, dismissing the applicant's application for default is set aside and the

Magistrate is directed to make a proper order under Section 523 of the Code of Criminal Procedure after giving the applicant one more chance to adduce evidence.

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