

Chandmal and anr. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Oct-13-1969

Reported in : 1971CriLJ137

Judge : L.S. Mehta, J.

Appellant : Chandmal and anr.

Respondent : State of Rajasthan and anr.

Judgement :

ORDER

L.S. Mehta, J.

1. On October 7, 1966, Mahendra Singh, Station House Officer, Chittorgarh, P.W. 7, in exercise of his powers under. Section 550, Criminal P.C., seized a number of gold and silver ornaments, cash amounts and other articles which were suspected to be stolen property, from the house of the accused Chandmal Chimpa, under memo Ex. P.

2. On November 5, 1966, Chhogalal, P.W. 5, made a report Ex. P. 4, to the Station House Officer, Chittorgarh, alleging that theft of gold and silver ornaments from his house had also been committed in the month of Bhado Smt. 2021. The accused Chandmal had created some doubt in his mind as also in the mind of his wife Mst. Ram Sukhi and, therefore, they took no prompt action against him. However, after

the arrest of the accused Chandmal, it appeared that his ornaments from his house had also been stolen away by him. On receipt of the report, the police registered a case and started investigation. In the course of investigation, Chhogalal and his wife, Mst. Ram Sukhi, identified their 3 articles, namely gold 'Bajanti', a pair of 'Polris' and a pair of ring, which had been stolen away from their house. The articles were got identified through Chhogalal, P.W. 5 and Mst. Ram Sukhi, P.W. 6, in identification proceedings conducted by the Second Class Magistrate, Chhitor-garh. Aminur Rehman Niyazi, P, W. 3: vide identification memo Ex. P.

3. Eventually, a challan was put up by the police in the court of the First Class Magistrate, Chittorgarh, on July 29, 1967, for the trial of the accused under SS. 454 and 380, Penal Code. The accused was, however, tried Under Section 380, Penal Code. The accused denied to have committed any offence. In support of its case the prosecution examined 7 witnesses. In his statement, recorded Under Section 342, Criminal P.C., the accused stated that the ornaments belonged to his mother Mst. Deu Bai, D. W.

1. In his defence, he examined his mother, who deposed that the above articles belonged to her. The trying Magistrate disbelieved the plea taken by the accused and rejected his defence evidence. Applying the presumption under illustration (a) to Section 114, Evidence Act, he convicted the accused Under Section 411, Penal Code., and sentenced him to six months' rigorous imprisonment. The seized property was ordered to be restored to the complainant Chhogalal. An appeal was taken against that judgment to the court of the learned Sessions Judge, Pratabgarh. The finding of the appellate court was that the only evidence against the accused was that the stolen goods were recovered from his possession, but as the accused was found in possession of the stolen property some 2 years after the theft, he could not be said to be in its possession soon after the theft within the meaning of illustration (a) to Section 114, Evidence Act. He, therefore, gave benefit of the doubt to the accused and acquitted him of the offence Under Section 411, Penal code.

2. The accused is aggrieved against a part of this judgment. Contention of learned Counsel for the accused is that since he was acquitted, the Sessions Judge should have ordered the return of the ornaments either to him or to his mother Mat. Deu Bai from whose possession they were recovered. learned Counsel further argued that the only course open to the Criminal Court was to return the property to the accused and leave the party dissatisfied to a remedy in a civil court. His further contention is that the finding of the trial court in so far as the ownership of the property is concerned, is erroneous. learned Counsel for the State Government has supported the order of the court below.

3. It is true that Under Section 517, Criminal P.C., except in exceptional cases, the rule is that if no crime is made out, the Magistrate should return the property from whom it was taken. learned Counsel has drawn attention of the Court to a decision of the Andhra Pradesh High Court in *Satyamma v. Gjpala Reddy* : AIR 1961 AP122 . In that case it was observed that where articles were seized from a person who claimed ownership thereof, as the purchaser, and the case of the complainant was dismissed and the accused was discharged, the mere fact that the complainant and his witness said that they could recognise the articles would not be enough, even if the criminal Court is going into the matter of ownership to establish the ownership of the complainant, In such cases the proper procedure would be to adopt the normal course of returning the articles to the person from whom they were taken. In the Andhra Pradesh case (1) the accused purchaser acquired possession and admittedly the properties were recovered from his possession. In this case there is no question of any purchaser. Therefore that case is not of much assistance for the solution of the problem in hand. learned Counsel for the petitioner has cited another authority of the Orissa High Court, reported in *Raj Kishore v. Narasingh* A.I.R. 1969 Orissa 53, This is a case of stealing of an idol. There were two rival claimants of the idol. As the idol was found in possession of the accused since sometime past, it was ordered to be returned to them. The complainant claimed that the idol belonged to him, The Orissa High Court held that since the accused was acquitted and since the rival claim was not decided in the criminal case, the Court below went wrong in deciding such a question and ordering the delivery of the property to the complainant. This case is also not on all fours with the fact of the present case. It is a settled law that a

criminal Court will not go into the niceties of the question of title and will ordinarily leave the parties to seek their remedies in a civil Court. But where, as here, there is a concurrent finding of fact that the property recovered from the possession of the accused is a stolen property, the Court can be exercise of its discretion order the return of the property to the person who is entitled to have it. I get support for this proposition from a decision of the D. B. of the Bombay High Court, comprising Shah and Vyas JJ.: vide P. Krishnamurthi v. State A.I.R. 1955 N U C (Bom) 5891 I quote below a passage occurring in that judgment:

It is true that in passing an order Under Sections 517 and 52.3, Criminal P.C., the Criminal Court is not concerned to decide questions of title, but where the circumstances disclose that the person found in possession of property has acquired no title whatever and the circumstances in which the property has been acquired also appear prima facie to create suspicion that the transaction was not above board, the Court is justified in directing that the property be handed over to the person who has title thereto.

Relevant observations are also found in Pushkar Singh v. State of Madhya Bharat : AIR 1953 SC508 . Paragraph 3 of the judgment affords a valuable guidance on the point under discussion. It is reproduced below:

It seems to us that this order cannot be sustained in view of the clear findings of fact given by the Magistrate to the effect that no offence was committed in respect of the sum of Rs. 463 and that it did not belong to the complainant. It was on the basis of these findings that Pushkar Singh was acquitted and the amount recovered from his house was ordered to be delivered to him Unless it was found that an offence was committed in respect of this sum, there was no jurisdiction to the High Court to order the payment of this amount to Mst. Kaushillya Bai. We have not been able to appreciate the view of the High Court that though the stolen property consisted of currency notes those notes may have been changed by the accused.

There is no evidence to support this finding and unless by due procedure of law the acquittal of the accused is changed into a conviction, the order for payment of the sum of Rs. 463 in favour of Mst, Kaushillya Bai cannot be sustained under the clear provisions of Section 517, Criminal P.C.

From the above citation, it is manifest that if an offence was committed in respect of the property recovered, there was justification for the return of the property to the complainant. In this case, there is, as has been stated above, precise and definite finding of fact of the two Courts below that the property recovered was the stolen property. The accused Chand-mal has been acquitted because of the belated recovery of the stolen property and because of the non-applicability of illustration (a) to Section 114, Evidence Act. Nevertheless the fact remains that the property is stolen property and such a finding cannot be disturbed in the exercise of this Court's power of revisional jurisdiction. The property, therefore, has been rightly restored to the complainant Choggalal, who along with Mat. Ram Sukhi had identified them before a Magistrate. In that view of the matter, the discretion exercised by the Courts below cannot lightly be brushed aside.

4. In the result, this revision-petition having no force stands dismissed.