SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Gobaria and ors. Vs. State

Gobaria and ors. Vs. State

SooperKanoon Citation : sooperkanoon.com/754731

Court : Rajasthan

Decided On : Oct-26-1964

Reported in : 1966CriLJ235

Judge : L.N. Chhangani, J.

Appellant : Gobaria and ors.

Respondent : State

Judgement :
ORDER

L.N. Chhangani, J.

1. The petitioners Gobaria, Sohan and Sitaram sons of Bhopa, Ganchi of Jodhpur, have filed this revision against the order of the Additional Sessions Judge, Jodhpur, dated 23rd May 1963, set-ting aside their discharge by the Additional Munsif Magistrate No. 1, Jodhpur, and directing a further enquiry against them.

2. The facts leading to the order of remand may be briefly stated as follows:

The Tehsildar Jodhpur exercising powers of Collector under Section 230 of the Rajasthan Land Revenue Act, 1956 (hereinafter referred to as the Act) issued a warrant for the attachment of the immovable property of Bhopa Ganchi. The warrant was to he executed before 29th August 1962. The warrant was endowed

to Revenue Inspector Chanwar and Patwari Jhalamand. It appears that the warrant was not expected to be executed before 29th of August 1962 and consequently, on that date the Revenue Inspector submitted an application to the Tehsildar for extending the date. The Tehsildar passed an order extending the date of the execution of the warrant upto 80th of August 1962. The extended date was not incorporated in the warrant. On 30th August 1962, Som Nath Revenue Inspector along with some other persons went to the field of Bhopa to execute the warrant and to attach cows and one calf of Bhopa. When the Revenue Inspector was returning with the attached cattle, the accused-petitioners who are sons of Bhopa, assaulted the Revenue Inspector and his party and snatched away the attached cattle. Som Nath lodged information with the Police and eventually the petitioners were challaned under Sections 323 and 392, Indian Penal Code, in the Court of the Additional Munsif Magistral No. 1, Jodhpur. The Magistrate after recording the evidence, noted certain defects in the warrant. He found--

1. that the order extending the date of the warrant was not sealed by the Tehsildar and no new warrant of attachment was issued ; and

2. that the warrant of attachment was issued in the name of two persons According to the Munsif Magistrate it ought to have been issued to one person for execution.

On the basis of these defects the Additional Munsif Magistrate expressed an opinion that the public servants were not in lawful discharge of their duty and the accused petitioners committed no offence in removing the property from their possession. He accordingly discharged the three petitioners. The State filed a revision application which was heard by the Additional Sessions Judge. Jodhpur. The Additional Sessions Judge expressed a contrary view. He held that the principle relied upon by the Additional Munsif Magistrate that a warrant cannot be endorsed to more than one person is applicable only to warrants under Order 21, Rule 24 (2) Civil Procedure Code, and cannot be applied to the warrants issued under Section 230 of the Act. As regards the absence of the seal on the order of the Tehslldar extending the date, he held that the defect was of a minor nature In this view of the matter, he set aside the order of discharge and remanded the case

for further enquiry.

3. It may be stated at the outset that there is no bar in law against the endorsement of warrants in favour of more than one person. The Additional Munsif Magistrate and the Additional Sessions Judge both fell into error in expressing the view that the warrant must be endorsed only to one person. They relied in this connection upon the State v. Banarsi Lai ILR (1954) 4 Raj 504. That decision, in my opinion, does not lay down the principle sought to be deduced by the Courts below. In that case the warrant of attachment was on a printed form, directing the Nazir- Amin to execute it. Although there was no Amin appointed for the Court, the Court issuing the warrant omitted to score out the word 'Amin' and the warrant was executed by the Nazir of the Court.

Emphasising the omission on the part of the Court to score out the name of the 'Amin' the learned Judge observed that the warrant was defective because while the printed form mentioned both Nazir and Amin as the persons to whom it was ad-dressed, the name of the Amin was not scored out so as to make it specifically directed to the Nazir. The defect pointed out by the learned Judges was the omission to direct it to a specific officer. There is nothing in the decision to indicate that their Lord-ships held that a warrant cannot be endorsed in favour of two persons. The Additional Sessions Judge holding that the warrant cannot be executed in favour of two persons though mistakenly upheld the warrant in the present case on the ground that the decision in ILR (1954) 4 Raj 504 cannot be applied to a warrant issued under Section 230 of the Act. I consider it proper to point out that the Additional Sessions Judge was wrong in making a distinction between the warrant issued under Order 21, Rule 24 (2), Civil P.C. and the warrant issued under Section 230 of the Act, Section 230 of the Act reads as follows:

230. Attachment and sale of movable property. --The Collector may attach and sell the movable property of the defaulter. Every attachment and Sale ordered under this section shall be made according to the law in force for the time being for the attachment and sale of movable property under the decree of a civil Court. In addition to the particulars mentioned in the proviso to S 60, Civil P. C, 1908

(Central Act V pf 1908), articles set aside exclusively for religious use shall be exempted from attachment and sale under this section. The cost of attachment and sale shall be added to the arrear of revenue or rent and shall be recoverable by the same procedure.

It is clear from the language of the section that attachment and sale under this section has to be made according to law in force for the time being for attachment and sale of the movable property under decide of the civil Court. I fail to understand how in spite of the cleat language of Section 230 of the Act, the Additional Sessions Judge held that the law laid down in ILR (1954) 4 Raj 504 in connection with Order 21, Rule 24 (2) Civil P.C. is not applicable to a warrant of attachment under Section 230 of the Act. The ground relied upon by the Additional Sessions Judge is, therefore, not sufficient to sustain his order. Be that as it may, in view of there being no bar against the endorsement of a warrant in favour of more than one person the petitioner cannot succeed in supporting the judgment of the trial Magistrate. Nothing turns upon the defect so much emphasised by the Courts below.

4. As regards the second defect, namely the absence of the seal of the Court on the order of the Tehsildar extending the date, I must point out that this defect is also not of a decisive character. The real defect, in my opinion, is the absence of the mention of the extended date in the warrant of attachment. The warrant as originally issued had become time barred after 29th of August, 1962. If the date had to be extended, it was necessary for the Tehsildar to have mentioned the extended date in the warrant of attachment. It will be useful in this connection to refer to Sheikh Nasur v. Emperor ILR 37 Cal 122 In similar facts and the circumstances, a Division Bench of the Calcutta High Court laid down the law in the following terms:

Now, assuming that this warrant had been extended to August 8th, that date did not appear on the warrant. Therefore, the warrant failed in an essential particular, and was at the time of the resist, once, on the face of it, not a good warrant. That being so we think the prisoners could not be convicted of voluntarily obstructing a public servant in the discharge of his public functions, because the discharge of

the public function was the execution of a warrant, and the warrant at the time failed to show that it could be executed at the time when the resistance was offered to the public servant.

With respect, I agree with the observations quoted above. The Tahsildar having failed to mention the extended date in the warrant and having also failed to issue a new warrant the Revenue Inspector was not competent to execute the warrant on 30th August, 1962, and they were not in the lawful discharge of the public functions. The petitioner haivng offered resistance to the execution of such a warrant cannot be treated as having assaulted public servants in the discharge of their public duties or to have committed an offence under Section 392, Indian Penal Code in removing their own cattle from the possession of the Revenue Inspector. The attachment having been void ab initio the petitioner in taking their father's property committed no offence of theft and consequently, no offence of robbery. The order of discharge by the Magistrate was proper and reasonable and the Additional Sessions Judge went wrong in setting aside the order of discharge.

5. The revision application is accepted, the order of the Additional Sessions Judge is set aside and the order or discharge recorded by the trial Magistrate is unheld.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com