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Court : Rajasthan

Decided On : Sep-26-1968

Reported in : 1968WLN117

Judge : D.S. Dave, C.J.

Appeal No. : S.B. Criminal Revision No. 158 of 1968

Appellant : Mithalal

Respondent : State and anr.

Disposition : Application dismissed

Judgement :

D.S. Dave, C.J.

1. This is a revision application by one Mithalal and it arises in the following circumstances.

2. One Bheemraj Kothari presented on 26th August, 1967 a complaint before the Sub Inspector Than Mandi, district Udaipur, that one jeep car No. R.J.S. 102 Which belonged to his nephew Mithalal, was entrusted to Prabhulal on the condition that during the election period he would make an earning by hiring it out and that after the elections would be over, the jeep would be returned in running condition, or that, in the alternative, Prabhulal would pay Rs. 6000/- to Mithalal and

get the registration certificate transferred in his name. It was further stated that Prabhulal executed a document on 19.8.67 for the return of the jeep and further obtained an amount of Rs. 100/- for its necessary repairs and agreed to deliver possession of the vehicle on 24-8-67, but he did not keep his promise and misappropriated it by delivering it to somebody-else. It was thus alleged that Prabhulal had committed an offence of criminal breach of trust. On receiving this report, the police made an investigation, seized the said jeep from the possession of Prabhulal and after completing investigation, challaned Prabhulal in the Court of Munsif-Magistrate, Udaipur, for an offence under Section 406 IPC on 22-9-67. Even before this challan was presented, Mithalal presented an application in the Court of Munsif-Magistrate under Section 517 Cr. P.C. with the request that the jeep seized by the police should be handed over to him. This application was contested on behalf of the accused. It was asserted by him that he had purchased the said jeep and that Mithalal had no subsisting title there to. On 30.11.67 the Magistrate decided Mithalal's application filed under Section 517 Cr. P.C. and dismissed it. It was observed by him that the ownership of the jeep was the subject-matter of dispute and that unless material prosecution witnesses are examined, it would not be proper to release it in Mithalal's favour. It was ordered by him that the jeep should remain in the custody of the police during the pendency of the case. Aggrieved by this order, Mithalal presented a revision application which was heard by the Additional Sessions Judge, Udaipur. The learned Additional Sessions Judge also observed that it was not possible for him at the present stage of the case to express an opinion about the documents which were relied upon by the contending parties and that the Magistrate was justified in keeping the jeep in police custody. Thereafter, it was noted by him that Mithalal's learned Counsel had suggested that the jeep should be kept in a garage and that the Mithalal would be prepared to meet the rental charges of the garage. This suggestion was accepted by him and he directed the Magistrate that the police authorities should be ordered to keep the said jeep in garage which would be taken on hire by Mithalal and its rent would be paid by him. It was further ordered that Mithalal may be allowed the aid of a mechanic to have a complete check-up of the jeep and to make a note about the condition of its machinery and material parts. Mithalal was also allowed to keep his truck on the garage along with the lock

of the police. This order was to be complied with within fifteen days. Mithalal is not satisfied with this order and, therefore, he has approached this Court.

3. Learned Counsel for the petitioner has strenuously urged that his client had produced before the learned Magistrate and the learned Sessions Judge the certificate of registration relating to the said jeep and other documents which clearly go to show that he was the owner of the property and that, under the circumstances, the vehicle ought to have been given over to him on his furnishing security to produce the vehicle before the court whenever required. It was further urged that if the vehicle would remain under the police custody, the petitioner would be deprived of the earning which he would make by plying it on hire and the condition of car would also go on deteriorating on account of lack of its use and proper care.

4. Shri Nauratanmal Singhvi appearing for accused Prabhulal contests the revision application. It is urged by him that the jeep might have belonged to Mithalal at one time, but its ownership was transferred to the accused and that the vehicle was in the ownership and possession of the accused at the time it was seized by the police. It is contended that unless the court came to the clear conclusion that an offence was proved against the accused, it had no authority to hand over the possession of the vehicle to Mithalal or Bheemraj. On the contrary, if the court came to the conclusion that the offence under Section 406 IPC was not proved against the accused, there would be no alternative for the court but to return the possession of the vehicle to the accused. It is also urged that, in fact, there is a civil dispute between the parties about the vehicle and that Mithalal and Bheemraj are trying to recover its possession by giving to the transaction a colour of offence. It is also pointed out that although the challan was put up as early as on 22.9.67, neither the complainant nor the police have examined even a single witness before the trial court so far although a period of more than a year has elapsed.

5. I have considered the arguments of both the parties. It may be observed that the application of Mithalal under Section 517 Cr. P.C. was misconceived in the first instance. The provisions of Section 517 Cr. P.C., can come into play only after an enquiry or trial is concluded in a criminal court and the court is called upon to

make some order about the property regarding which any offence appears to have been committed or which has been used for the commission of any offence. It is conceded by learned Counsel for the petitioner in this Court that no prosecution evidence has been examined in the trial court so far and thus the stage of invoking the provisions of Section 517 Cr. P.C. is yet far off. In fact, the application ought to have been presented under Section 516-A Cr. P.C. since it is requested by the petitioner's learned Counsel that his application may be decided by this Court having regard to the provisions of Section 516-A Cr. P.C., I have considered the revision application in that light and I think that even under Section 516-A Cr. P.C. this Court need not interfere with the order of the learned Additional Sessions Judge. It may be pointed out that the main purpose of Section 516-A Cr. P.C. is that if any property regarding which any offence appears to have been committed or which appears to have been used for commission of any offence, is produced before any criminal court during any enquiry or trial, the court should pass such orders as it thinks fit for the proper custody of such property during the pendency of the enquiry or trial. If the property is subject to speedy or natural decay or if it appears to court that it is expedient to do so, it may after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. In the present case, it is common ground between the parties that the property was not used for the commission of any offence nor is it subject to speedy or natural decay. The police seized the vehicle from Prabhulal's possession under the impression that an offence was committed regarding it. The trial court had, therefore, only to make an order for the proper custody of that property during the pendency of the trial. It is not the object of Section 516-A Cr. P.C. that the criminal court should, at that stage, enter into the question of title and hand over the disputed property to one party or the other. This view stands corroborated by *Brojendra chandra Dey v. K.S. Sama* A.I.R. 1981 Cal. 455 and *Sardarsingh Kohli v. Messrs Swastik Financial Corporation (P) Ltd., New Delhi and Ors.* 1964 (2) Cr. L.J. 492.

6. There is thus no merit in this revision application and it is hereby dismissed. The trial court is directed to expedite the trial of the case.

7. It appears from the order of the learned Additional Sessions Judge that it was at Mithalal's own suggestion that he ordered that the jeep car should be kept in a

garage which would be obtained by him on rent and that it should be kept there during the pendency of the case. The learned Additional Sessions Judge further allowed Mithalal to put his own lock on the garage along with the lock of the police in order to ensure that the police or anybody-else may not use it during this period. In my opinion, this order is very just and proper and when it was passed at the request of the petitioner himself, he could not justly make any grievance against it.

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