

**Ganesh Vs. the State and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/757785](http://sooperkanoon.com/757785)

**Court :** Rajasthan

**Decided On :** Apr-09-1987

**Reported in :** 1988CriLJ475; 1987(2)WLN201

**Judge :** Navin Chandra Sharma, J.

**Appellant :** Ganesh

**Respondent :** The State and anr.

**Judgement :**

ORDER

**Navin Chandra Sharma, J.**

1. Ghisu Lal son of Narayan Dhakar of village Arniyan had lodged a first information report No. 24 dated May 25, 1977 with the Station House Officer, RS. Nimbahera that he was robbed of a pair of bullocks by the petitioner Ganesh son of Heeraji of village Karunda whereupon Crime No. 25 of 1977 was registered and investigated by the Station House officer of the said Police Station. During the course of investigation, the Officer-in-charge, Police ' Station, Nimbahera seized the pair of bullocks from the possession of the petitioner Ganesh and thereafter gave a final report of 'no occurrence' under Section 173 Cr. P.C. to the Judicial Magistrate Nimbahera. This final report was perused by the Judicial Magistrate who decided on July 15, 1977 not to take cognizance of any offence on the, police report. In the above final report, the Officer-in-charge of Police Station, Nimbahera

had also solicited orders of the Judicial Magistrate, Nimbahera for handing over the possession of the pair of bullocks seized to Ghisulal. The Judicial Magistrate had not passed any order for the disposal of pair of bullocks while accepting the final report of 'no occurrence' submitted by the Officer-in-charge of the Police Station, Nimbahera. The S.H.O. Police Station Nimbahera, on a report being called by the Judicial Magistrate reported on January 23, 1978 that after acceptance of the final report, the pair of bullocks were called for from the Supardgar Bhagwanlal Ahir of Mallakheri and in compliance of the orders of the Assistant Superintendent of Police, Nimbahera, he handed them over to Ghisulal son of Narayan Dhakar of village Arniyan.

2. On July 27, 1977, Ganesh son of Heeraji of village Karunda made an application before the Judicial Magistrate, Nimbahera that he had purchased this pair of bullocks from Daulat Ram of village Arniyan for a consideration of Rs. 4000/- and a writing in that respect was also executed. On the next day or the day next thereafter, Gheesulal who is real brother of Daulat Ram, lodged the above mentioned first information report at the Police Station Nimbahera. The Officer-in-charge of the Police Station registered a case on the report of Ghisu Lal and seized the pair of bullocks from the possession of Ganesh. Subsequently a final report was submitted by the Police to the Judicial Magistrate, It was alleged that the Officer-in-charge of the Police Station had handed over the bullocks to supardgar but about three days before the making of application the Officer-in-charge of the Police Station called for the bullocks from the supardgar and handed them over to Ghisulal. It was pleaded that the Officer-in-charge of the Police Station had no right to handover the bullocks to Ghisulal without any order of the Judicial Magistrate. He prayed that the bullocks may be restored to him. Notice of the application of Ganesh was served on Ghisulal who filed a reply on December 7, 1977.

3. Ghisulal stated in his reply that Ganesh neither purchased any bullocks from Daulat Ram nor Daulat Ram voluntarily and out of free will executed any document in that respect in favour of Ganesh. On the contrary, the bullocks of Ghisulal were forcibly snatched by Ganesh, and the latter by exercising undue influence over his brother Daulat Ram, got his signature on a writing. It was stated

that amount of Rs. 4000/- was not at all given by Ganesh to Daulat Ram. As Ganesh and others had forcibly taken away the bullocks, Gheesulal lodged a first information report with the police. Although the police had given a final report, but it had written in the report that bullocks should be ordered to be given to him. The Judicial Magistrate, Nimbahera accepted the final report submitted by the police. Thereafter the police handed over to him the bullocks according to the order of the court. It was stated that bullocks were handed over to Ghisulal because they belonged to him and not to his brother Daulat Ram.

4. The Judicial Magistrate recorded evidence adduced by Ganesh and that produced by Gheesulal. The Judicial Magistrate, Nimbahera by his order dated August 14, 1978 rejected the application of Ganesh on the following grounds:

(1) In the document marked 'A' alleged to have been executed by Daulat Ram in favour of Ganesh, the features of the bullocks were not mentioned.

(2) No cash payment of Rs. 4000/- was paid by Ganesh to Daulat Ram but only an account between Ganesh and Daulat Ram was squared up in lieu of the bullocks,

(3) Daulat Ram had no right to sell bullocks of Gheesulal to Ganesh.

(4) After receiving back the bullocks from the Police Gheesulal had sold the bullocks to a third party. Thus the bullocks seized were not in possession of the Court and were not available to the court for disposal.

(5) The dispute is of civil nature and Ganesh should sue in Civil Court for return of bullocks of its price.

(6) Even if the claim of Ganesh is held to be proved, the bullocks were not available with the court and the criminal court cannot pass any order for refund of the amount of Rs. 4000/- to Ganesh.

5. Ganesh filed a revision before the Sessions Judge, Pratapgarh who dismissed the revision on April 16, 1979 on the ground that neither an appeal nor a revision lay against an order passed by the Judicial Magistrate under Section 457 Cr. P.C.

6. Ganesh has presented this petition as revision or alternatively as an application under Section 482 Cr. P.C. praying that the orders of the courts below may be quashed and the case be remanded to the Judicial Magistrate, Nimbahera for giving a just decision on the merits of the case on merits and he may be delivered the bullocks or their price.

7. With regard to the view of the Sessions Judge, Pratapgarh, suffice it to state that an order passed by a Magistrate under Section 457 Cr. P.C. is a final order and not merely an interlocutory order. On a proper case being made, the High Court has jurisdiction to examine orders passed under the said section by a Magistrate. Reference in this connection may be made to the decision reported in 1978 Cri LJ 204 (205) (All) and AIR 1967 Guj 126 (130) : 1967 Cri LJ 767 (771).

8. Facts of the case have already been narrated in detail and need not be repeated. The law is well-settled that after the property is seized by the police, orders for its final disposal can only be passed by the Judicial Magistrate and the Police are expected to hold the property subject to the orders of the Magistrate. Mere acceptance of the final report of the 'no occurrence' submitted by the Officer-in-charge of the Police Station, Nimbahera did not amount to any order regarding disposal of the property seized as alleged stolen property. The Station House Officer, Police Station, Nimbahera committed a gross illegality in handing over the possession of two bullocks in question to Ghisulal son of Narayan Dhakar of village Arniyan without any order of the Judicial Magistrate, Nimbahera passed under Section 457 Cr. P.C. As a matter of fact when Ganesh filed an application before the Judicial Magistrate, Nimbahera for handing over the bullocks to him, the Judicial Magistrate felt handicapped and embarrassed in passing a correct and appropriate order for disposal of the two bullocks which had already been handed over by the police to Ghisulal before the Magistrate could pass any order. The observations of the Magistrate in his order 'even if the claim of Ganesh is held to be proved, the bullocks were not available with the court and the court could not pass any order for the refund of the consideration amount of Rs. 4000/-.' 'speaks a lot about the embarrassing situation in which the Judicial Magistrate, Nimbahera was placed by the illegal action of the S.H.O. Police Station, Nimbahera and he was forced to say that the dispute was of a civil nature and Ganesh should sue in

a Civil Court for return of the two bullocks or their price. It is borne out from the evidence adduced in the case that Daulat Ram, brother of Gheesulal, had an account with Ganesh and in settlement of that account of more than Rs. 4000/-, Daulat Ram had given the two bullocks to Ganesh and even a writing to that effect was executed by Daulat Ram. The case of Gheesulal was that the bullocks belonged to him and his brother Daulat Ram executed the writing under undue influence or pressure from Ganesh. The burden of proving undue influence was on Ghisulal who even did not examine his brother Daulat Ram to say so. When after investigation of the report lodged by Ghisulal about the alleged robbery of two bullocks by Ganesh, the Police gave a final report of 'no occurrence' of robbery, we are simply bewildered as to how the police could even propose in its final report that the Magistrate may pass orders for handing over the possession of the pair of bullocks to Ghisulal and deprive Ganesh of the bullocks from whose possession they had been seized and against whom the allegations of theft, robbery of the bullocks had fizzled out. This was nothing less than high-handedness on the part of the Station House Officer, Nimbahera that he delivered the bullocks to Ghisulal without obtaining an order of the court and also that of the Assistant Superintendent of Police, Nimbahera who directed the Station House Officer to do so. Ganesh was clearly the person entitled to possession of the bullocks.

9. Keeping in view the fact that the Station House Officer, Nimbahera without any order of the Judicial Magistrate, Nimbahera under Section 457 Cr. P.C. illegally disposed of the bullocks by handing them over to Ghisulal, it is a fit case in which the ratio decidendi their Lordships of the Supreme Court in Smt. Basavva Kom Dyamangouda Patil v. State of Mysore : 1977 CriLJ1141 should be applied. In Smt. Basawa K.D. Patil's case, his Lordship Fazal Ali J., observed :

As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain ceases... In a criminal case, the police always acts under the direct control of the court and has to take orders from it at every stage of an inquiry or trial...when the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had

taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so requires, order payment of the value of the property.... The State is directed to pay a sum of Rs. 10,000/- to the complainant appellant.

10. The above dicta of their Lordships of the Supreme Court equally applies to a case where the seizure of property by a police officer is reported to a Magistrate under Section 102(3) Cr. P.C. and such property is not produced before the criminal court during an enquiry or trial, but is disposed of by the Station House Officer of the Police Station without an order of the Magistrate under Section 457 of the Code. As held by their Lordships of the Supreme Court in their decision reported in : 1976 CriLJ620 that after the property is seized by the police, orders for its final disposal can only be passed by the Magistrate. In the instant case, as already stated, the Station House Officer, Nimbahera handed over the two bullocks to Ghisulal without obtaining any orders of the Magistrate under Section 457 of the Code for their final disposal. On merits, it has been found that it was Ganesh who was entitled to possession of the two bullocks and not Ghisulal.

11. The revision is, therefore, allowed, the orders of the Sessions, Judge, Pratapgarh dated April 16, 1979 and that of the Judicial Magistrate, Nimbahera dated August 14, 1978 are set aside and the State is directed to pay a sum of Rs. 4000/- to Ganesh son of Heeraji of village Karunda within three months of this order.

Order pronounced in open court.