

Mehmood Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Jul-15-2003

Reported in : RLW2004(1)Raj97; 2003(4)WLC187

Judge : A.C. Goyal, J.

Acts : Rajasthan Forest Act - Sections 33, 41 and 42; Indian Penal Code (IPC) - Sections 353 and 379

Appeal No. : S.B. Criminal Misc. Petition No. 755 of 2003

Appellant : Mehmood

Respondent : State of Rajasthan

Advocate for Def. : Rizwan Alvi, Public Prosecutor

Advocate for Pet/Ap. : Azad Ahmed, Adv.

Disposition : Petition allowed

Judgement :

Goyal, J.

1. This petition by the petitioner under Section 482 Cr.P.C. is directed against the order dated 3.5.2003 whereby learned Additional Sessions Judge No. 2, Kishangarh Bas, district Alwar affirmed the order dated 21.4.2003 by which

learned Judicial Magistrate, Tijara dismissed the application for custody of tractor-trolley.

2. The relevant facts in brief are that one F.I.R. was registered at police station Tapukara with the averments that at about 7 p.m. on 4.1.2003 one Shri Ilias was found carrying stones by this tractor-trolley from the forest area and on preventing him by the forester, he along with others took away the tractor-trolley by using force.

3. F.I.R. under Sections 33, 41, 42 of the Rajasthan Forest Act and under Sections 353, 379 I.P.C. was registered. Charge-sheet came to be filed after investigation.

4. The petitioner, being owner of this tractor-trolley No. RJ 02-1-R2593, moved an application for custody of the tractor- trolley. The same was dismissed vide order dated 21.4.2003 and this order was affirmed in criminal revision No. 21/2003 vide impugned order dated 3.5.2003.

5. Learned counsel for the petitioner contended that it is rainy season and the tractor-trolley are require for cultivation, that the petitioner is not the accused in this criminal case, that the tractor-trolley are lying in open and the same would be damaged and thus, the same should be given to the petitioner of Superdaginama pending trial of the criminal case. Learned Public Prosecutor supported the impugned orders.

6. I have considered the rival submissions. In State of Karnataka v. K. Krishnan (1), the Hon'ble Supreme Court while dealing with the provisions of Karnataka Forest Act, 1963 held that generally, any forest produce and the tools, boats, vehicles etc., used in the commission of the forest offence, which are liable to forfeiture, should not be released. But for any exceptional reasons, the Court may release the vehicle during such pendency on furnishing a bank guarantee.

7. Thus, keeping in view the submission made y learned counsel for the petitioner, it appears an appropriate case wherein the tractor along with trolley may be given on Superdaginama on furnishing a bank guarantee along with other usual terms and conditions i.e. the petitioner shall not alienate of further encumber the vehicle

and change the identify of the vehicle till disposal of the case and he shall produce the vehicle as and when required by the trial court, since the price of the tractor and trolley is not on record, the amount of the bank guarantee would be determined by Judicial Magistrate, Tijara.

8. Consequently, this petition is allowed and the orders passed by both the courts below are set aside. The tractor along with trolley would be given to the petitioner on Superdaginama on furnishing a bank guarantee of the amount to be determined by Judicial Magistrate, Tijara and on other usual conditions as mentioned hereinabove.

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