

Devi Chand Jain Vs. the State of Rajasthan

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Court : Rajasthan

Decided On : Dec-19-1990

Reported in : 1990WLN(UC)228

Judge : B.R. Arora, J.

Appeal No. : S.B. Cr. Misc. Petition Nos. 240 and 202 of 1990.

Appellant : Devi Chand Jain

Respondent : The State of Rajasthan

Disposition : Petition dismissed

Judgement :

B.R. Arora, J.

1. These two petitions relate to the delivery of tractor No. RJN 1193, cultivator and displough seized in C.R. No. 18 of 1990 at Police Station, Sirohi, and therefore, I propose to decide both the petitions by this common order.

2. The facts of the case are that on February 20, 1990, the complainant Devi Chand filed a complaint in the Court of the Judicial Magistrate, Sirohi, against Chhelsingh and Laxamn Dan for offences Under Sections 406 and 379, I.P.C. The learned Magistrate sent the report for investigation Under Section 156(3) Cr. P.C. to the Station House Officer, Police Station, Sirohi, who, after necessary

investigation, presented the challan Under Sections 406 and 379, I.P.C. against the accused in the Court of the Munsif and Judicial Magistrate, Sirohi. During investigation, the police seized the tractor, cultivator and the displough. After the seizure of the tractor, cultivator and the displough, Laxman Dan as well as Devi Chand, both, moved separate applications for the delivery of the displough to them. The learned Magistrate, by his order dated April 19, 1990, ordered for the delivery of the tractor, the cultivator and the displough to Devi Chand on certain conditions. Dissatisfied with the order dated April 19, 1990, passed by the Judicial Magistrate, Laxman Dan filed a revision petition before the learned Sessions Judge, Sirohi, and Devi Chand, aggrieved with the conditions imposed at the time of delivery of the tractor, cultivator and the displough, filed a miscellaneous petition Under Section 482, Cr. P.C. before this Court, which is registered as: S.B. Criminal Misc. Petition No. 202 of 1990 (Devi Chand v. The State of Rajasthan and Anr.). The revision petition filed by Laxman Dan was allowed by the learned Sessions Judge and the learned Sessions Judge, by his order dated June 18, 1990, set- aside the order passed by the Munsif and Judicial Magistrate, Sirohi, and ordered for the delivery of the tractor alongwith the cultivator and displough to Laxman Dan. It is against this order, passed by the learned Sessions Judge that Devi Chand filed S.B. Civil Miscellaneous Petition No. 240/1990 (Devi Chand v. The State of Rajasthan and Anr.).

3. I have heard the learned Counsel for the petitioner, the learned Counsel for the respondent No. 2 and also the learned Public Prosecutor.

4. The question involved in S.B. Criminal Miscellaneous Petition No 240/90 is that who is the person best entitled for delivery of the tractor, cultivator and the displough. It is contended on behalf of the petitioner Devi Chand that on April 29, 1989, Laxman Dan, by a sale agreement, agreed to sell the tractor alongwith cultivator and displough to him for a consideration of Rs. 31,000/- and at that time he paid Rs. 5000/- and a Motor costing Rs. 9000/- was given to Laxman Dan and the remaining amount was to be paid within three months. At the time of this agreement, the possessions of the tractor alongwith the cultivator and the displough was handedover to him. His case is that it was agreed between them that whenever Laxman Dan gets the registration transferred in his favour, he will

pay the amount of remaining Rs. 17,000/-. As Laxman Dan did not get the registration of the tractor etc. transferred in his favour, therefore, the amount could not be paid, but he is ready to pay this amount to Shri Laxman Dan in case he gets the registration transferred in his favour. The next contention of the Counsel for the petitioner is that as a criminal case is pending against Laxman Dan, in which he is an accused and the police after necessary investigation, presented a challan and the Court has taken the cognizance against him, therefore, the tractor, cultivator and the displough cannot be given to him. In support of this contention, the learned Counsel for the petitioner has placed reliance over the judgments of this Court rendered in: Kailash Chand v. Paras Mal 1981 RLW 206, Makbool Khan v. The State of Rajasthan 1983 RCC 98 and Banney Singh v. The State of Rajasthan 1985 RCC 297. The learned Counsel for the complainant, on the other hand, has submitted that the order passed by the Revisional Court is perfectly just and proper and the Revisional Court, after taking into consideration the law on the point and the attending circumstances, came to the conclusion that the complainant Laxman Dan is the person best entitled for the delivery of the tractor, cultivator and the displough. He has further submitted that the registration of the tractor is in his name. He has also, pointed out that as per the version of the petitioner Devi Chand himself, he has only paid an amount of Rs. 5000/- against the cost of the tractor, which was agreed to be sold for an amount of Rs. 31,000/- He has further submitted that there was a Clause in the agreement that if Devi Chand will not make the payment of the balance amount within the period of three months then he will be entitled to take the tractor back. As the balance amount was not paid by the petitioner, therefore, he returned the tractor etc. to him. Regarding the agreement dated January 1, 1990, counsel for the non petitioner has submitted that a bare reading of this document would show that it is not an agreement and he further submitted that there are cuttings in the agreement, which have not been signed and, therefore, this document cannot be relied upon.

5. I have considered the rival submissions made by the counsel for the parties.

6. It is not disputed that a complaint was filed by Devi Chand in the Court of the Munsif and Judicial Magistrate, Sirohi, in which the tractor was seized and this complaint was sent for investigation to the police and the police, after necessary

investigation, presented the challan and the learned Magistrate has taken the cognizance against Laxman Dan and Chhel Singh and the matter is still pending. The learned Counsel for the petitioner has contended that as Laxman Dan is an accused in a case with respect to this very tractor, therefore, the delivery and custody of the tractor, cultivator and displough cannot be given to Laxman Dan and he has placed reliance on Makbool Khan v. The State of Rajasthan 1983 RCC 98, Banney Singh v. The State of Rajasthan 1985 RCC 297, and Kailash Chandra v. Paras Mal 1985 RLW 206). Merely because a complaint has been filed and on the basis of which a cognizance has been taken by the Court, it will not disentitle any accused for consideration of his case for the custody of the vehicle. If that will be allowed then a great hardship will be caused to the real owner and the person who is in possession of the motor vehicle because in that case any person may lodge a report or file a complaint against the real owner and if by chance he succeeds in getting the cognizance taken and the vehicle seized and as soon as the cognizance is taken, the right for consideration of the custody of the vehicle to the actual owner goes away as the case is pending against him. I am therefore, of the opinion that at the time of consideration regarding the custody of the vehicle, the claim of the petitioner for the custody of the vehicle cannot be altogether ignored on the point that a criminal case is pending against him in which the cognizance has been taken. That may be a ground for not giving the custody of the vehicle to him but it cannot altogether disentitle him for the custody of the vehicle. Keeping this in view that a criminal case is pending against Laxman Dan, and the cognizance has been taken against him by the Court, I will consider the case of the respondent Laxman Dan as well as that of Devi Chand as to who is the person best entitled for the delivery of the tractor.

7. It is not in dispute that the tractor was sold by Chhelsingh or Laxman Dan nor the custody of the tractor was forcibly taken from Devi Chand. Devi Chand, in the complaint itself, has mentioned that Chhelsingh S/o Laxman Dan took away the tractor from him and refused to give it back. No cognizance against Laxman Dan or Chhelsingh has been taken Under Section 379, I.P.C. Even as per the admitted case of Devi Chand, he has paid only Rs. 5000/- and according to him, the balance amount of Rs. 17,000/- is to be paid by him, which he has not, admittedly, paid. The payment of Rs. 9000/- by way of electric motor is also in dispute. There

is a condition in the agreement dated April 29, 1989, that if the payment will not be made within three months then Laxman Dan will be entitled to get the tractor back. Even as per the version of Devi Chand, he has not made the payment of the balance amount of Rs. 17,000/- itself. The alleged agreement dated January 9, 1990 does not lead anywhere. The registration of the tractor is in the name of Laxman Dan and at the relevant time, the tractor was seized from the custody of Chhelsingh S/o Laxman Dan. Considering all these facts, I am of the view that the learned Sessions Judge has not committed any illegality in giving the custody of the tractor, cultivator and the displough to Laxman Dan.

8. Consequently, the S.B. Criminal Miscellaneous Petition No. 240 of 1990 (Devi Chand v. The State of Rajasthan and Anr.) is, therefore, dismissed.

9. In S.B. Criminal Miscellaneous Petition No. 202 of 1990 (Devi Chand v. The State of Rajasthan and Anr.), the petitioner has challenged the conditions imposed by the learned Magistrate in his order dated April 19, 1990, while ordering the custody of the tractor, cultivator and displough to Devichand. When I have already decided the S.B. Criminal Miscellaneous Petition No. 240 of 1990 against the petitioner Devi Chand and directed the delivery of the tractor, cultivator and displough to Laxman Dan, this S.B. Criminal Miscellaneous Petition has, become infructuous and it is not necessary to decide the question regarding the imposition of the condition, but even otherwise, the four conditions imposed by the learned Magistrate are perfectly just and proper and none of the conditions can be said to be, in any way, unreasonable, harsh or unjust.

10. In the result, both the miscellaneous petitions, i.e., S.B. Criminal Miscellaneous Petition No. 202/90 (Devi Chand v. The State of Rajasthan and Anr.) and S.B. Criminal Miscellaneous Petition No. 240 of 1990 (Devi Chand v. The State of Rajasthan and Anr.) are dismissed.