

KutubuddIn Vs. State of Rajasthan

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Court : Rajasthan

Decided On : May-01-1991

Reported in : 1991WLN(UC)186

Judge : Y.R. Meena, J.

Appeal No. : S.B. Cr. Misc. Petition No. 11 of 1984

Appellant : Kutubuddin

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

Y.R. Meena, J.

1. This miscellaneous petition under Section 482, Cr.P.C. is directed against the order of learned Munsif and Judicial Magistrate, Pokaran dated 14.6.84.
2. The main grievance of the petitioner is that learned Munsif and Judicial Magistrate has wrongly ordered for the auction of eight bullocks of the petitioner.
3. The brief facts of the case are that on 29.3.82 at 6.00 p.m. the Incharge of Police Out-Post Lathi had received information from one informer that in the east, 5/6 miles from village Bhadariya two persons alongwith eight bullocks were going

towards village Tawarki. Upon this information, the Head Constable followed these persons and on 30.3.82 one Shri Noor Khan S/o Tamachia Khan (father of the petitioner Kutubuddin) was arrested alongwith eight bullocks. A complaint was lodged to the Munsif & Judicial Magistrate, Pokaran by the SHO, Pokaran. It has been alleged in the complaint that the father of petitioner Shri Noor Khan has not given any satisfactory explanation regarding the ownership of these, bullocks, therefore, it was doubted that these bullocks might have been stolen. They were seized by the police and later on handed over to kutubuddin on 'Supardginama'. On investigation by the police it is found that the eight bullocks are the property of petitioner Kutubuddin.

4. Thereafter, on 20.12.84 an application was submitted to the Munsif Magistrate, Pokaran stating therein that on investigation it is found that Kutubuddin is the real owner of these eight bullocks and on similar facts in case of Hameer Singh and Ramzan, some bullocks were handed over to them, therefore, the eight bullocks should be handed over to petitioner Kutubuddin as he is the real owner of the bullocks. The Magistrate did not accept the ownership of Kutubuddin and ordered for the auction of the bullocks. The order of acution was passed on 14.6.84. That order of Magistrate was stayed by the High Court.

5. Being aggrieved, petitioner has filed the present miscellaneous petition.

6. Heard learned Counsel Shri Kala for the petitioner and learned Public Prosecutor Shri Vyas for the State and perused the material on record.

7. The facts are not in dispute that at the time of enquiry on spot Noor Khan father of Kutubuddin alleged that the bullocks are purchased by kutubuddin (his son). That he is dealer in bullocks and he left these bullocks in the Dhani and went to Dehli for selling live goats. The enquiry report of Police concluded on 1.2.84 also reveals that Kutubuddin son of Noor Khan is the real owner of these eight bullocks. During investigation by the police ASI, Police Station, Pokaran, statement of Mohammed Khan was recorded who was the previous owner of these bullocks. He admitted that the bullocks were sold by him to kutubuddin for Rs. 2800/-. Out of which Rs. 1100/- were received and balance Rs. 1700/- were to be received in the srawan month. The concerned Sarpanch has also certified that

these bullocks were previously owned by Mohammed Khan before selling them to kutubuddin. No other claimant came to claim these bullocks after the proclamation. Not only that, there was no theft report in respect of these bullocks in any police outpost, nor any material was there to suggest that these bullocks can be said that somebody else can be the owner instead of Kutubuddin. In my view, there is no justification for auction of these bullocks when sufficient evidence has been adduced in respect of the ownership of these bullocks.

8. In fact, in case of sale or purchase of animals there is no practice to issue receipt of sale except in some exceptional cases. Otherwise normal practice is that on handing over the money, the owner of animal hand over the physical possession of animal to the purchaser and sale is completed. In the case in hand, when the previous owner accepts that he sold these bullocks to kutubuddin and Kutubuddin's father also disclosed this fact at the outset when he was enquired by the police and Sarpanch concerned also certified that Kutubuddin has purchased these bullocks from Mohammed Khan, the ownership of kutubuddin is established.

9. In the facts and circumstances of the case, the order of the Magistrate is erroneous. Hence, the same is quashed. The miscellaneous petition is allowed.