

Deva Ram Vs. State of Rajasthan and anr.

Deva Ram Vs. State of Rajasthan and anr.

SooperKanoon Citation : sooperkanoon.com/766196

Court : Rajasthan

Decided On : Dec-02-1998

Reported in : 1999CriLJ1115

Judge : G.L. Gupta, J.

Acts : Code of Criminal Procedure (CrPC) , 1974 - Sections 397(3), 451 and 482

Appeal No. : Criminal Misc. Petn. No. 777 of 1996

Appellant : Deva Ram

Respondent : State of Rajasthan and anr.

Advocate for Def. : J.S. Choudhary, Adv. (for No. 2) and; N.K. Soni, Public Prosecutor

Advocate for Pet/Ap. : P.N. Mohanani, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

G.L. Gupta, J.

1. This misc. petition under Section 482 Cr.P.C. is directed against the order dt. 26-9-96 of the learned Addl. Sessions Judge, Banner whereby he dismissed the

revision of the petitioner filed against the order dt. 9-9-96, passed by the Judicial Magistrate giving the tractor on 'Superdaginama' to non-petitioner No. 2.

2. The relevant facts are that Tiku Ram lodged a report that on 13-2-96 he had purchased the tractor No. RJS 9494 from Jala Ram for Rs. 1,30,000/- but the same was forcibly taken away by Deva Ram (petitioner) on the night intervening 11-8-96 & 12-8-96. On this report a case was registered and the tractor was seized from Deva Ram petitioner. Both Deva Ram (petitioner) and Tiku Ram (non-petitioner) made applications before the Magistrate for handing over the tractor to them. After hearing the counsel for the parties, the learned Magistrate allowed the application of Tiku Ram and directed the delivery of the tractor to him imposing certain conditions. This order was challenged by Deva Ram in revision petition filed before the Addl. Sessions Judge, who by the impugned order dismissed his revision petition.

3. Mr. Mahanani, learned counsel for the petitioner, contended that the tractor stands registered in the name of the petitioner and, therefore, he is the best person entitled to the possession of the tractor and the learned Magistrate as also the learned Addl. Sessions Judge have committed error in not delivering the tractor to the petitioner. He placed reliance on the cases of Sikander Beg v. State of Rajasthan 1993 Cri LJ 1114 (Raj), Uma Ram v. State of Raj 1997 Cri LJ 2793 (Raj) and Ishar Nath v. State 1984 Raj Cri C 44.

4. On the other hand Mr. Choudhary, learned counsel for the non-petitioner No. 2, pointed out that the tractor has been registered in the name of the petitioner on 21-8-96 i.e. after the registration of the FIR No 34/94 lodged by Tiku Ram against the petitioner. He pointed out that Kesra Ram was the registered owner of the tractor, who had sold it to Deva Ram (petitioner) on 1 -9-92 and Deva Ram sold the same to Magha Ram, who in his turn, sold to Jala Ram, and his client purchased the same on 13-2-96 from Jala Ram but as Magha Ram expired, the formalities of registration could not be completed and the petitioner is now taking advantage of the death of Magha Ram. He urged that the tractor was in the possession of Tiku Ram before it was stolen by Deva Ram and, therefore, interim custody of the tractor has rightly been given to his client. He cited the cases of Radhey Shyam v.

Laxminarayan 1988 (2) Raj LW 610, Maqbool v. State of Raj 1983 Cri LR (Raj) 114, Dharma Ram v. Lichu Ram 1996 Cri LR (Raj) 273 and Bheem Raj v. State 1990 (2) Raj LW 105.

5. At the out set, it may be stated that this petition is not maintainable as it is nothing but second revision petition in the garb of misc. petition. Second revision is barred by Section 397(3) Cr.P.C. In the case of Neeraj Kumar v. State 1996(2) WLC (Raj) 215 : 1996 Cri LJ 2067, the Division Bench of this Court has held that in view of the statutory bar under Section 397(3) party having already taken recourse to revision cannot be allowed to take recourse to Section 482 and thereby circumvent the provisions of Section 397(3) Cr.P.C. The petition is liable to be dismissed on this ground alone.

6. Even on merits the petitioner is not entitled to any relief. In the cases cited by the learned counsel for the petitioner, of course, this Court has taken the view that normally the vehicle should be given to the person in whose name the vehicle is registered in the Registration Department, for the reason that the person other than registered owner cannot ply the vehicle without registration certification, but in my opinion, that is not the universal rule which can be adopted in each and every case. The application of law will depend on the facts and circumstances of each case. In the instant case it is not disputed that the vehicle was not registered in the name of Deva Ram (petitioner) on the day he had forcibly taken the vehicle from the possession of Tiku Ram. The petitioner has got the registration of the vehicle in his name on 21 -8-96 i.e. ten days after the date of the occurrence. Therefore, on the ground of registration certificate the, vehicle could not be given to the petitioner.

7. Under Section 451 Cr.P.C. the Court is empowered to make such order as it thinks fit for the proper custody of the property pending the conclusion of enquiry or trial. The tractor was not in the possession of the petitioner immediately before the date of occurrence. The non-petitioner, on the other hand, has produced documents which go to show that Jala Ram had sold the tractor to Tiku Ram on 13-2-96. It is obvious that as registration was not transferred in favour of Magha Ram and even Deva Ram, so there was no transfer of registration in favour of Tiku

Ram. The successive buyers went on taking the tractor on the basis of agreements to sell and the registration continued in the name of Kesra Ram original owner. Tiku Ram has even filed bills of repairs of the tractor, which shows that the tractor was in his possession. The plea of non-petitioner that Deva Ram changed his mind because of untimely death of Magha Ram, does not appear to be without substance. In the peculiar circumstances of the case the vehicle has rightly been delivered to the non-petitioner.

8. This Court in the cases cited by learned counsel for the non-petitioner has held that even though the vehicle is not registered in the name of the party, the interim custody of the vehicle can be given to him. There may be difficulty for the non-petitioner in plying the tractor without registration certificate but then it is his problem. On that ground, the petitioner cannot be handed over the tractor. There is no illegality in the order passed by the trial Court and affirmed by the revisional Court.

9. Consequently, the misc. petition, being devoid of merit, is dismissed.