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Court : Rajasthan

Decided On : May-24-1996

Reported in : 1996(1)WLN331

Judge : Amaresh Kumar Singh, J.

Appeal No. : S.B. Crim. Misc. Petition No. 258 of 1991

Appellant : Kodar Lal

Respondent : State of Rajasthan

Disposition : Petition allowed

Judgement :

Amaresh Kumar Singh, J.

1. Heard the learned counsel for the petitioner and learned Public Prosecutor.
2. The certified copy of the order passed by the learned Judicial Magistrate, Banswara, shows that the vehicle was seized by the Police and an application was moved in the Court of Judicial Magistrate, Banswara for delivery of the vehicle to the petitioner under Section 451 of the Criminal Procedure Code. The learned Judicial Magistrate rejected the application of the petitioner on the ground that some cases under the Forest Act were pending against him. It appears that the petitioner prayed before this Court that the vehicle be given in his custody and on

31st May, 1991. Hon'ble Mr. Justice A.K. Mathur after taking into consideration the facts and circumstances of the case directed that the vehicle in question No. RPB 1458 Involved in the case State v. Amba Lal Criminal Case No. 16/91-92 pending before the Munsif & Judicial Magistrate, Banswara may be released to the petitioner provided he furnished a personal bond in the sum of Rs. 70,000/- and undertakes that he will further not alienate this vehicle and produce the same as and when called for by the Magistrate during the trial. On 13th September, 1991 the order was corrected on the application of the petitioner to the extent that the Court of Munsif & Judicial Magistrate, Banswara was directed to be read as Judicial Magistrate, No. 1, Banswara.

3. The learned counsel for the petitioner has submitted that the order passed by the learned Judicial Magistrate No. 1, Banswara cannot be upheld and should be quashed for the simple reason that he has not taken into account the necessity of preserving the vehicle in question, the condition of which is likely to deteriorate if, it were permitted to be kept at the Police Station. Persons and properties according to the scheme of laws under the Constitution are given certain protections. In the case of persons, Article 21 of the Constitution, protects the life and personal liberty by providing a guarantee that no person shall be deprived of his life and personal liberty except according to procedure established by law. Therefore, no authority of an proceed to curtail life and personal liberty of any person unless the laws empowers the authority to do so. The necessity of legal authority for curtailing life or personal liberty has necessitated! the evaluation of the concepts of jurisdiction and powers and the limits thereof. A law may confer authority on any public servant to do a thing. Such authority is indicated by the jurisdiction. The extent of action and the form of action which may be performed by the authority may also be indicated by the law. In the case of properties Article 300(A) of the Constitution provides that no person shall be deprived of his property except under the authority of law which means that property too is given a Constitutional protection and no-one can be deprived of his property unless the law authorises such deprivations. The jurisdiction and powers of the Police in respect of person and his properties are not absolute; they are, firstly, dependent upon some express provision of law and secondly, they are subject to the limitations imposed by law-which means that if there is no express provision

conferring on Police the power to deprive any person of his life and personal liberty or property then no such power can be used and even in those cases where power has been conferred this power cannot be exercised beyond the limits prescribed by law nor it can be exercised without fulfilling the conditions imposed by the law, for its exercise. In view of this, the power of the Police to seize the vehicle and the power of Magistrate to pass an order under Section 451 of the Criminal Procedure Code in respect of the property which is within the purview of Section 451 of the Criminal Procedure Code is neither absolute nor arbitrary. The power to seize a property during investigation or on suspicion that some offence has been committed in relation to it has a limited purpose namely to ascertain whether an offence has been committed or not and to find out who committed it and whether the property can be a relevant piece of evidence during the trial. Therefore, when any property is seized by the Police under the Criminal Procedure Code for the purpose of investigation enquiry or trial such seizure does not totally deprive the owner of the property of his right to own, possess and enjoy the property. His title to the property is not adversely affected by the seizure by the Police. Title to property is generally the subject matter of civil Courts jurisdiction so far as possession and enjoyment are concerned. Seizure of property by the Police temporarily deprives the person of his possession and enjoyment/use and this temporary deprivation is for the purpose of facilitating the investigation, enquiry or trial. The civil right to possess and use the property is not totally taken away by the seizure of property by the Police, it is only eclipsed for the time being in public interest with the object of facilitating the investigation enquiry or trial. This is why whenever a property is seized by the Police and such seizure is reported to the Magistrate who is called upon to exercise the power under Section 451 of the Criminal Procedure Code. The necessity of preserving the property arises not only with a view to ensure its production during enquiry or trial but also with a view to protect the Interest of the person who is the owner thereof or who is entitled to possess it. Therefore, the Courts cannot Close their eyes to the aforesaid necessity of preserving the property seized by the Police, so that the value of the property may not be deteriorated and the person entitled to such property may not suffer avoidable loss. This Court has in several cases pointed out the necessity of taking measures for protecting the property seized by the Police. In the instant

case the learned Judicial Magistrate No. 1 Banswara does not appear to have given due attention to the necessity of preserving the vehicle in question. In these circumstances it is proper that the order dated 9th May 1991 passed by the learned Judicial Magistrate No. 1 Banswara in Criminal Case No. 16/91-92 be quashed in exercise of power conferred by Section 482 of the Criminal Procedure Code and the order is accordingly quashed. The vehicle in question No. RPB 1458 is directed to remain in the custody of the petitioner subject to the conditions imposed by the order passed by this Court on 31st May, 1991. The petition is decided accordingly. A copy of the order be sent to the learned Judicial Magistrate, Banswara for information.

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