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Court : Rajasthan

Decided On : Jun-06-1985

Reported in : 1985WLN(UC)281

Judge : Vinod Shanker Dave, J.

Appeal No. : S.B. Cr. Revision No. 124 of 1985

Appellant : Shyam Singh

Respondent : State and ors.

Judgement :

Vinod Shanker Dave, J.

1. The petitioner has challenged the order passed by Additional Sessions Judge, Deeg, dated 27-4-1985, whereby he set aside the order by Judicial Magistrate, Bayana dated 30-1-1985, directing the custody of vehicle No. RSD 3681 to Shyam Singh and now ordered by revisional court to be delivered to Prem Chand.

2. The aforesaid vehicle was seized by police in relation to the investigation of criminal case No. 12/85 registered at Police Station Bayana on 16-1-1985, on a report lodged by petitioner, Shyam Singh, where in he gave details about the disputes in respect of the vehicle and also bringing out a case of cheating. An application under Section 457 Cr. PC was filed which, as mentioned above, was

decided in favour of the petitioner. The revisional court reversed this order on the ground that Prem Chand is the registered owner of the vehicle and the final report has also been submitted by the police.

3. The grievance of petitioner in this case is that the revision petition was not maintainable before the Additional Session Judge; and further that he could not directly exercise the powers under Section 452 Cr. PC and further that there is a factual error in the judgment that final report has been submitted, while the matter is still under investigation. The learned counsel for the petitioner submitted that the order being without jurisdiction should be quashed.

4. Learned counsel appearing for non petitioners No. 2 and 3 supported the order of the Additional Sessions Judge, submitting that order is not interlocutory in nature but is a final order, and, therefore, the revisions was maintainable. It has been submitted that the criminal case has been falsely lodged after 7 months to mount pressure on non -petitioners. who have-been depositing regular instalment in the Rajasthan Financial Corporation. It is, therefore, submitted that non petitioner No. . 2 is the only rightful claimant of the vehicle.

5. I have gone through the rival contentions raised' by the learned counsel for parties. The learned Additional Sessions Judge has passed detailed order considering the various cases decided by this Court and in substance has rightly passed order while ordering the delivery of matador RSD 3681 to Premchand, however, he should not have assumed jurisdiction under Section 452 Cr. PC by writing the last lines in the order unless the final report was accepted by the competent Magistrate. The revisional court cannot forestall the order of the Magistrate. It is for the Magistrate to accept or reject the final report or to direct a fresh investigation and to say the least the revisional court assumed jurisdiction not vested by law in him. As such, it is. this part of the order only which deserves to be set aside..

6. I, therefore, modify the order as under:

7. The vehicle No. RSD 3681 shall be delivered to Premchand on his executing a bond in sum of Rs. 1,00,000/- (Rupees. one lac only) for production of the vehicle

as and when required by the court and final disposal of the property shall be subject to orders to be passed after acceptance of final report or in case trial proceeding after the trial is over.

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