

**State of Rajasthan Vs. Indra Singh**

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**Court :** Rajasthan

**Decided On :** Jan-27-1988

**Reported in :** 1988(1)WLN276

**Judge :** Milap Chandra, J.

**Appeal No. :** S.B. Cr. Leave to Appeal and Appeal No. 164 of 1987

**Appellant :** State of Rajasthan

**Respondent :** indra Singh

**Disposition :** Petition dismissed

**Judgement :**

**Milap Chandra, J.**

1. This petition has been moved under Section 378, Cr. PC, 1973 against the judgment of the learned Chief Judicial Magistrate, Barmer dated June 23, 1987 by which he acquitted the accused-respondent under Section 10, Rajasthan Requisitioning of Goods Vehicles Act, 1269 (here in after referred to as 'the Act'). The facts of the case giving rise to this petition may be summarised thus.

2. On 18-4-1986, requisition order Ex. D/2 was issued by the District Magistrate, Barmer to Dhanji s/o Uttam Singh Rajpoot r/o Lachhmi Nagar, Barmer, owner of the heavy vehicle No. RJC 363, under Section 3(2) of the Act directing him to

produce the said vehicle before him on the same day. It was served upon the accused Indra Singh. On his failure to produce the vehicle, report Ex. P/2 was sent to the Station House Officer Barmer. Thereon a case under Section 10 of the Act was registered. After investigation, a challan under this Section was filed against the accused-respondent Indrasingh in the Court of the Chief Judicial Magistrate, Barmer. The particulars of the offence were explained to him. He did not plead guilty. The prosecution examined Assistant Collector and Magistrate, Barmer, Shri Budharam Meena PW 1. LDC of the Collectorate, Barmer, Maghraj PW 2, and District Transport Officer, Barmer, Shri Gopaldan PW 3. The accused denied all the allegations of the prosecution story in his examination under Section 313, Cr. PC. After hearing the parties, the learned Chief Judicial Magistrate acquitted the accused on the grounds that no order under Section 3(2) of the Act was addressed to him and the procedure adopted by the District Magistrate, Barmer while issuing the order Ex. D/2 was against the provisions of the Act.

3. It has been contended by the learned Public Prosecutor that the learned Chief Judicial Magistrate has not properly appreciated the evidence on record, he has acquitted the accused on technical ground, he did not consider that the order Ex. D/2 was admittedly received by the accused and he was the driver of the vehicle for which it was issued.

4. Admittedly, the requisition order Ex. D/2 issued under Section 3(2) of the Act was addressed to Dhansingh and not to the accused Indar Singh. It is clear from the provisions of Sub-section (1) & (2) of Section 3 of the Act that the requisition order should be addressed and served on the same person. Person addressed and person served cannot be different persons. Section 10 of the Act enshrines that if any person contravenes any order made under Section 3, he shall be punishable with imprisonment for a term which may extend to 1 year or with fine or with both. Admittedly, no order was addressed and issued to the accused Indar Singh. It cannot, therefore, be said that the accused Indar Singh has contravened any order made under Section 3 of the Act. The learned Magistrate has rightly acquitted him.

5. There is yet another aspect of the matter. It has been deposed by the Lower Division Clerk of the Collectorate, Banner, Maghraj PW 2 that he used to deliver blank forms of the order like that of Ex.D/2 to the District Transport Officer, Barmer, after getting the signatures of the Collector, Barmer on them. He has further deposed that the writings in the green ink in the order Ex. D/2 are in the hand-writing of the District Transport Officer, Barmer, Shri Gopaldan PW 3 admits this fact in his cross-examination, The requisition order Ex. D/2 shows that the name of the addressee, vehicle No. and date are in green ink. According to the said statements of Maghraj PW 2 and Gopaldan PW 3 the requisition order Ex. D/2 was blank when it was signed by the District Magistrate, Barmer and the name and address of Dhanji, vehicle No. RJC 353 and dated 18-4-1986 were written thereafter. It cannot, therefore, be said that a requisition order was issued by the District Magistrate, Barmer in respect of this vehicle as required under Section 3 of the Act.

6. The District Magistrate, Barmer could not legally delegate his authority of issuing such a requisition order to the District Transport Officer, Barmer. Section 3 of the Act empowers the Government for requisitioning the goods vehicles for the purpose of transport of essential commodities and drinking water. Section 9 of the Act authorises the Government to delegate its powers to any officer by Notification in the Official Gazette. In exercise of this power, the Government authorised the District Magistrate, Barmer for issuing requisition orders under Section 3 of the Act. The maxim 'Delegatus Non Prodest Delegete' (a delegatee cannot delegate) applies in this case. As such the District Magistrate, Barmer could not issue blank requisition orders and authorise the District Transport Officer, Barmer to incorporate therein the name and address of the owner/driver of the vehicle the number of the vehicle and date for its production.

7. It may also be mentioned here that order Ex. D/1 dated 29-4-1986 issued by the Tehsildar, Barmer has been filed by the accused It shows that the said vehicle RJC 363 was released by him with effect from April 25, 1986. When the said vehicle was already requisitioned and was in possession of the Tehsildar Barmer, it could not be requisitioned by the District Magistrate Barmer.

8. To say the least the concerned authorities did not apply their mind before lodging the report Ex. P/2 and launching the prosecution against the accused Indrasingh. There is no substance in the leave petitioner.

9. Accordingly, the leave petition is dismissed.

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