

Govindachari Vs. the State and anr.

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Court : Chennai

Decided On : Mar-15-1978

Reported in : 1979CriLJ428

Judge : Paul, J.

Appellant : Govindachari

Respondent : The State and anr.

Judgement :

ORDER

Paul, J.

1. This criminal revision case has been preferred against the order of the learned First Additional Sessions Judge, Madras Division, setting aside an order passed by the learned Fourteenth Metropolitan Magistrate, Madras, under Section 452, Cr.P.C. and directing the trial court to conduct a fresh enquiry.

2. In C. C. No. 30791 of 1976 on the file of the court of the Fourteenth Metropolitan Magistrate, Madras, one Mani was charge sheeted by the police for an offence under Section 380, I. P. C. on the allegation that on 25-11-1975, the accused committed theft of a double row gold chain weighing 5 1/2 sovereigns and a silver anklet weighing about. 80 grams belonging to one Govinda Achari. The prosecution case was that the accused was employed under the said Govinda

Achari, the complainant to the police, but subsequently left his services, but again went back to his service and on the same night committed theft of the aforesaid articles and then went and sold the same to the second respondent herein, one Atma Rao, who was a pawn broker and Atma Rao melted the same into ingots. The accused was subsequently apprehended and was examined by the police and the ingots were recovered from the second respondent. The accused however was acquitted by the learned Magistrate under Section 248 (1). Cr.P.C. on the sole ground that in spite of several adjournments, the police did not produce the witnesses. The learned Magistrate while acquitting the accused passed an order in the judgment directing the return of the ingots to Govinda Achari, the complainant to the police who was P. W. 1 in the charge sheet. An appeal was preferred under Section 454, Cr.P.C. before the learned Sessions Judge, by Atma Rao. The learned Sessions Judge held that the order passed by the trial court returning the property to Govinda Achari the complainant to the police was not in accordance with the procedure established by law inasmuch as the trial court without examining the witnesses cited in the charge sheet and the accused simply ordered the return of the property to P. W. 1. Hence he set aside the order and directed fresh enquiry.

3. I am afraid the order of the learned Sessions Judge is un supportable. It is not necessary for passing an order under Section 452, Cr.P.C. that the trial court should examine witnesses and hold an elaborate enquiry. In this case, no evidence was let in and the accused was acquitted. Apparently after perusing the records of the case, the learned Magistrate passed an order directing the return of the property to P. W. 1. The records clearly show that from the house of Govinda Achari, the complainant to the police, a double row gold chain and a silver anklet were stolen. The accused himself when examined by the police stated that he stole the articles and sold them to Atma Rao. Atma Rao himself in his statement under Section 161 (3). Cr.P.C. admitted that he purchased the two row gold chain and the silver anklet from the accused and converted them into ingots. Atma Rao has therefore obtained the jewels from the thief and as such he could have acquired no title to the same. According to Atma Rao, the ingots were made from the jewels after melting them. In the circumstances, the trial court was perfectly justified in having ordered in return of the ingots to P. W. t. In *Tookpappa v. State*

(Kant) it has been held that while making the order of disposal of property, the Magistrate could deliver it to any person claiming to be entitled to the possession thereof or otherwise, meaning thereby that the property could be delivered even to a person not claiming to be entitled thereto, provided the magistrate was of the opinion that in the best interest of the property as well as the parties involved, the property need be delivered to him and that it was so because the order of the Magistrate is only a tentative arrangement and the final title to the property or right to possess the same are to be determined by the Civil Court or any other court of competent jurisdiction. The learned Magistrate in this case has exercised the discretion given under Section 452 Cr.P.C. rightly and the learned Sessions Judge was not right in having set aside the order of the learned Magistrate.

4. The criminal revision case is allowed and the order of the learned Sessions Judge is set aside and that of the learned trial Magistrate is restored.

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