

The State Vs. Sova Rani Debi

The State Vs. Sova Rani Debi

SooperKanoon Citation : sooperkanoon.com/874402

Court : Kolkata

Decided On : Apr-27-1971

Reported in : 1973CriLJ784

Judge : P.C. Borooah, J.

Appellant : The State

Respondent : Sova Rani Debi

Judgement :

ORDER

P.C. Borooah, J.

1. This is a reference under Section 438 of the Code of Criminal Procedure by Sri R.B. Saha, Sessions Judge, Howrah, recommending that an order dated the 5th of January of 1970, passed by Sri Section K. Banerjee, Magistrate, 1st Class, Howrah, ordering the return of some rice seized in connection with a case under Section 7(1) of the Essential Commodities Act, 1955, to Sm. Sthovaranl Devi, wife of the deceased accused K.C. Chakrabarty of the said case, and a further order dated 5th of May, 1970 rejecting the prayer of the State for reconsideration of the order dated the 5th January, 1970 should be Set aside.

2. The late K.C. Chakrabarty, the husband of Sm. Shovarani Devi, a Railway Guard, was being prosecuted for carrying 61 bags and 12 baskets of rice weighing

about 4760 kgs. in the brake-van of the Titagarh-Howrah passenger. The rice was alleged to be smuggled. The said K.C. Chakrabarty died on 24.2.69 and Sri S.M. De. the trying Magistrate dropped the case against him on 31.3.69 and directed the seized rice to be confiscated to the State and to be sold to the Food Department. On 5.1.70 on the prayer of the widow of the said K.C. Chakrabarty. viz. Sm. Shovarani Devi, Sri S.K. Banerjee, the successor Magistrate passed the following order:

Seen petition filed by the wife of the deceased K.C. Chakrabarty. As the, case was dropped without proving any judgment the Alamat should not be confiscated but should be returned to the wife of the deceased. CSI to comply.

3. This order being communicated to the Court Inspector for compliance, the Court Inspector filed a petition for rehearing the matter and the learned Magistrate after hearing the parties rejected the petition on 5.5.70. The State moved the learned Sessions Judge against the orders dated 5th January 1970 and 5th May. 1970, and the learned Sessions Judge has made the present reference.

4. Mr. Debaprosad Chowdhury appearing on behalf of the State in support of the reference has made a twofold submission. Mr. Chowdhury's first submission is that the order dated 31.3.69 passed by Sri Section M. De is a perfectly valid order in accordance with law. Mr. Chowdhury's second submission is that the order dated 5.1.70 and all orders subsequent thereto passed by the successor Magistrate are illegal and without jurisdiction.

5. In support of his first point Mr. Chowdhury has submitted that when the accused died no charge had been framed against him and on his death the enquiry which was proceeding abated. Since on 31.3.69 no enquiry or trial was pending. Section 516-A of the Code of Criminal Procedure had no application. Neither would Section 517 Cr.P.C. be attracted as this section only applied when an enquiry or trial had been concluded, and by the death of an accused the enquiry could not be said to have been concluded. Hence according to Mr. Chowdhury the only section under which the Magistrate could make the order for disposal of the property was Section 523 Cr.P.C. and under this section the Magistrate had the discretion to make an order for the disposal of the property. In this connection Mr. Chowdhury

has referred me to the case of Tarachandy. The State, reported in AIR 1951 Madhya Bharat 154.

6. As regards the second point Mr. Chowdhury's submission is that the successor Magistrate had no power or jurisdiction to review or in any way alter the order passed by Sri S.M. De on 31.3.69. According to Mr. Chowdhury the order passed by Sri Section M. De was in the nature of a final order and although Section 369 Cr.P.C. does not in terms apply to the case of final orders, nevertheless the same principle would be applicable. In this connection he has drawn my attention to the case of Ghulam Ali v. Emperor reported in 47 Cri LJ page 32 (Lah) and to the case of Ramchandra v. Hasthimal Jain reported in AIR 1956 Madh Bha 161 : 1956 Cri LJ 895. Mr. Chowdhury has further submitted that there is no provision in the Code of Criminal Procedure which empowers a Magistrate to review his own order.

7. Mrs. Nag has opposed the reference. As regards the question of jurisdiction raised by Mr. Chowdhury her submission is that the main question to decide is whether the order passed by the successor Magistrate reviewing the order dated 31.3.69 is an improper order or an illegal order. According to Mrs. Nag under the Criminal Procedure Code there is no bar to the reviewing of an order except that which comes under the purview of Section 369, Cr.P.c. Mrs. Nag has further submitted that if an order is reviewed it does not become illegal but only improper and thus no question of jurisdiction arises, and if no question of jurisdiction does arise then the question of limitation will come in; And according to Mrs. Nag the State moved the learned Sessions Judge against the order dated 31.3.69 long after the period of limitation was over and as such the Sessions Judge could not have taken cognizance of a time-barred application and made the present reference.

8. As regards the section under which the order of disposal was made Mrs. Nag has conceded that Section 523 Cr.P.C is the appropriate section but has submitted that the Magistrate could not make an order of disposal under the said section without first complying' with the provisions of Sections 523(2) and 524, Cr.P.C.

9. It is an accepted principle of law that when a matter has been finally disposed of by a Court the Court is in the absence of a direct statutory provision, 'fontis officio' and cannot entertain a fresh application for the same relief unless and until the previous order disposing of the matter finally has been set aside by a superior Court in accordance with law. This principle of law is embodied in Section 369 of the Code of Criminal Procedure which, however, applies to judgments. The question is. can a Court set aside or review its own order which does not amount to a judgment. In this case a distinction has to be made between an interlocutory order and a final order. In respect of a final order which does not amount to a judgment in a trial Section 369 of the Code of Criminal Procedure would not in terms apply, but the general principles on which the section is based would be applicable and such final order cannot be altered or reviewed by the Court which passed it or by any other Court of co-ordinate jurisdiction. If this was not so there would not be any finality to any order passed by a Court finally disposing of a matter. Where, however, the order is an interlocutory order there is no bar to the Court which passes the order to reconsider it. In the instant case the order passed by Sri S.M. De on 31.3.69 was a final order and the successor Magistrate had no jurisdiction to review or alter it.

10. In the case of Ghulam Ali v. Emperor 47 Cri LJ 32 referred to by Mr. Chowdhury it was held, inter alia, that where a Magistrate passed an order under Section 523, Cr.P.C. directing the delivery of certain property on furnishing security to the person from whom it was recovered, the Magistrate could not subsequently vary that order and direct delivery of the property to some other persons, e.g. the complainant, as it would tantamount to reviewing of his first order.

11. In the other case of Ramchandra v. Hasthimal Jain it was observed that though the order passed under Section 517, Cr.P.C. about the delivery of the property may be a final order concerning the property against which an offence is alleged to have been committed, still Section 369 would not in terms apply to such orders, though the principle on which the section is based should be applied to such orders.

12. As regards the question whether the order for disposal passed by Sri. S.M. De on 31.3.69 was a perfectly valid order or not I agree with the submission advanced by Mr. Chowdhury. By the death of the accused the enquiry which was pending abated and as such on 31.3.69 neither was any enquiry or trial pending nor concluded and as such the order for disposal could not have been passed either under Section 516-A or 517, Cr.P.C. The only section which was applicable was Section 523.Cr.P.C. This is also the view of the Madhya Bharat High Court in the case of Tarachand v. The State cited by Mr. Chowdhury. Under Section 523, Cr.P.C. the Magistrate has the widest discretion in the matter of disposal, but if he chooses to decide to deliver the property to any person he must deliver it to the person entitled. The order dated 31.3.69 was, therefore, a perfectly valid and legal order which the learned Magistrate was competent to pass.

13. As I am of the view that the order dated 5.1.70 and all orders subsequent thereto are illegal and without jurisdiction the question of limitation raised by Mrs. Nag is of no consequence.

14. In the circumstances aforesaid I set aside the order dated 5.1.70 passed by Sri S.K. Banerjee and all orders subsequent thereto and uphold the order passed by Sri S.M. De on 31.3.69.

15. The reference is accordingly accepted.