

Revana Siddappa Vs State of OrissaA.

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Court : Orissa

Decided On : Dec-21-2010

Judge : Indrajit Mahanty,J.

Acts : Code of Criminal Procedure (CrPC) (Cr.P.C.) - Sections 401, 457, 457,457(1).

Appeal No. : CRLREV NO.1336 OF 2010.

Appellant : Revana SiddappaA.

Respondent : State of OrissaA.

Advocate for Def. : Mr. R.R. Mohanty. Advs

Advocate for Pet/Ap. : M/s P.K. Nayak; H.B. Dash; D.Nayak; S.K. Mohapatra; R. Nayak; CH.A.K. Das; B.K. Sethy. Advs

Judgement :

1. In the present application under Section 401 Cr.P.C. challenge has been made to an order dated 1.11.2010 passed in C.M.C. No. 214 of 2010 passed by the learned S.D.J.M., Keonjhar, by which order an application filed under Section 457 Cr.P.C. filed by the petitioner for and on behalf of Ashok Transport as its power of attorney holder came to be rejected, inter alia, on a finding that, while the Bus bearing temporary Registration No. KA-25TC-1054 involved in the accident and release of the vehicle sought for belongs to the TATA Motors Limited, the power of attorney filed by the petitioner was not by TATA Motors Limited, but by Ashok

Transport, who was not the owner of the vehicle in question.

2. Mr. Nayak, learned counsel for the petitioner placed reliance on a "Transportation Agreement" entered into by Ashok Transport with TATA Motors Limited, in terms of which the vehicle in question was being transported from Dharward in the State of Karnataka to RSO Kharagpur in the State of West Bengal on the basis of a Stock Transfer Memo (Annexure-1) and while the said vehicle was proceeding through Orissa at Keonjhar met with an accident leading to the death of a person who was travelling on the road. Learned counsel for the petitioner also lays stress on various clauses of the said "Transportation Agreement" including Clauses (i), (k) and (n) to establish the fact that the petitioner who is the power of attorney holder of Ashok Transport, the signatory to the Transportation Agreement with the TATA Motors Limited was endowed with the responsibility of transporting of the vehicle of TATA Motors from various locations to their various dealers located throughout the country. Stress is laid on the contents of paragraph-'n' of the Transportation Agreement, which is quoted below:-

3. " If the vehicles entrusted to you for the transportation are not delivered at the prescribed destinations, for any reason whatsoever, and you are not able to account for the same, you shall be liable to compensate us, without delay or demur, in respect of the vehicles to undelivered and unaccounted for. The said compensation shall include the value of the said vehicles (i.e. the value-at which said vehicle would have been sold by us to our customers, had they been delivered at the destination) together with interest at the rate of 18% per annum on the value of the said vehicles and the interest shall be for the period commencing from the date on which the said vehicles would have normally been delivered at the destinations, till such date on which the compensations paid to us."

4. A copy of the seizure list is also submitted by the learned counsel for the petitioner in Court today. From which it appears that the vehicle was seized from the custody of a driver who was employed by Ashok Transport. Apart from the above, learned counsel for the petitioner placed reliance on a judgment of the Hon'ble Supreme Court in the case of General Insurance Council and others v.

State of Andhra Pradesh and others, reported in (2010) 6 Supreme Court Cases 768, wherein the Hon'ble Supreme Court took into consideration various earlier judgments passed by the Hon'ble Supreme Court and ultimately keeping in view the general public interest directed in paragraph-14, as under:- " It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in the police stations but upon being kept in open , are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its roadworthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicle are either stolen or are cannibalized so that the vehicle becomes unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereby above, we direct that all the State Governments/Union Territories/ Director General of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police station, especially with regard to disposal of the seized vehicle be taken care of by the Inspector General of Police of the division/Commissioner of Police concerned of the cities/Superintendent of Police concerned of the district concerned."

5. Considering the nature of submission made and after hearing the learned counsel for the State, I have also perused the impugned order. Section 457(1) of the Code of Criminal Procedure, 1973 is quoted herein below:-

"Procedure by police upon seizure of property.-(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property."

6. In terms of the said provision of the Code of Criminal Procedure, 1973, the Magistrate is authorized to direct delivery of the property seized to "the person

entitled to the possession thereof". In the case at hand since the vehicle in question belonging to TATA Motors Limited had been handed over to the possession of Ashok Transport for the purpose of transporting the said vehicle to its dealer located at Kharagpur in the State of West Bengal, there cannot be any doubt that Ashok Transport was in lawful possession of the vehicle in question at the time when the accident took place and the vehicle was seized by the police authority from a driver who was working for Ashok Transport. From the impugned order it clearly appears that the power of attorney holder, who has filed the present petition had filed a power of attorney in his favor to move such an application under Section 457 Cr.P.C. by Ashok Transport and the said power of attorney holder was the lawful attorney for prosecuting the case on behalf of the lawful possessor of the vehicle, on date the accident occurred, I am of the considered view that the prayer made by the petitioner ought to be allowed in his favor by quashing the order dated 1.11.2010 passed by the learned SDJM, Keonjhar in CMC No. 214 of 2010 arising out of G.R. Case No. 771 of 2010 and further direct release of the vehicle in question in favor of the petitioner with conditions that may be stipulated by the learned SDJM. The CRLREV is accordingly disposed of.

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