

M.Abbas Vs. State of Karnataka

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Court : Karnataka

Decided On : Jun-20-1980

Reported in : 1980(2)KarLJ259

Judge : Patil, J.

Acts : [Karnataka Forest Act, 1963](#) - Section 62

Appeal No. : Crl.R.P. Appeal No.1164 of 1980

Appellant : M.Abbas

Respondent : State of Karnataka

Advocate for Pet/Ap. : B.R. Nanjundaiah; M. Gopalakrishna Shetty, Advs.

Judgement :

(1) THIS revision is directed against the order dated 27-2-1980 passed by the sessions Judge, Chikmagalur, in Crl. Rev. Petn. No. 3/80 on the file of his court whereby he has set aside the order dated 15-2-80 passed by the J. M. F. C. , releasing the vehicle seized under S. 62 of the Karnataka Forest act, 1963 (hereinafter referred to as "the Act") in favour of the petitioner. It is alleged that on 8-2-1980 when the lorry bearing No. GDT 8810 belonging to the petitioner was engaged in transporting fire-wood in the Mudigere range, the Range Officer, Mudigere, on duty, seized the same together with the fire-wood said to be Government property being illicitly transported in the said lorry, and later on

produced the lorry together with the load of the firewood before the divisional Forest Officer, Chikmagalur division, as provided under S. 7 LA of the Act for confiscation. He also thereafter sent a First Information report regarding the illicit transportation of the fire-wood in form No. 17 as prescribed under Rule 65 (1) of the Karnataka Forest Manual (hereinafter referred to as 'the Manual') to the additional J. M. F. C. , Chikmagalur.

(2) WHEN the matter was still under investigation, on 12-2-1980, the petitioner, who is admittedly the registered owner of the lorry made an application under s. 451 r/w S. 457 Cr. P. C. , before the magistrate requesting for release and interim custody of the same on the ground that, when the lorry in question was parked in front of the Divisional forest Office, the Range Forest Officer had seized the same on the false allegation that it was engaged in illicit port of the fire-wood belonging to the government and if the lorry was not released and entrusted to his custody, it was likely to be damaged. On the Senior asst. Public Prosecutor endorsing on the application so made by the petitioner that the lorry in question was no more required for the investigation and it could to released in favour of the petitioner after taking adequate security to, produce the same before the court whenever required, the learned magistrate proceeded to make an order releasing the lorry and entrusting the same to the custody of the petitioner on his furnishing surety in a sum of Rs. 50. 000 on condition that the same shall be produced before the Court or before the Divisional Forest Officer, Chikmagalur, as and when required. Being aggrieved by the said order, when the State by the divisional Forest Officer, Chikmagalur, dn. , approached the Sessions Judge in, Crl. "rev. Petn. "no. 380, the learned Sessions Judge relying on the decision in Ravindra Patali v. State of Karnataka (1), since no inquiry or trial was pending and the property was also not produced before the Court, the seizure being under Section 62 of the act by the Range Forest Officer and the report made to the Magistrate being under S. 62 (3) of the Act, neither the provisions of S. 451 Cr. P. C. , nor the provisions of S. 457 was applicable to the facts of the case and the Magistrate had no jurisdiction to make such an order regarding the release and interim custody of the vehicle and set aside the order made by the Magistrate. Being aggrieved, the petitioner has approached this Cpurt in revision. Mr. M. Gopalakrishna Shetty, learned Counsel appearing for the petitioner argued in the first place that the learned Sessions

Judge had no jurisdiction to entertain the revision.

(3) ACCORDING to him, the order passed by the Magistrate regarding the interim

1. (1978) 2 Kar. L. J. 462, Tran custody under S. 451 Cr. P. C. , was an interlocutory order and the provisions of sub-sec.

(2) of S. 397 Cr. P. C, operated as bar against the exercise of the revisional powers in relation to such interlocutory order and the order passed by the learned Sessions Judge, therefore, being without jurisdiction deserved to be set aside. Secondly, he argued, the view taken by the learned Sessions judge that the Magistrate had jurisdiction to make an order regarding the release and custody of the vehicle seized under S. 62 of the Act, and the provisions of S. 451 and 457 Cr. P. C. , were not attracted to the facts of the case, was wholly erroneous. He argued further, when a report regarding the seizure, as provided under S. 62

(3) of toe Act, is made to the Magistrate, the magistrate gets the jurisdiction to make any order regarding the disposal of the property seized under S. 62 of the Act. It was his contention, on receipt of the report under sub-section

(3) of S. 62, as provided under S. 64 of the Act, the magistrate gets the jurisdiction to take all such measures as may be necessary for the disposal of the property according to law and the expressions "according to law" used in S. 64 of the act, in the context in which they have been used, have reference only to the provisions of the Crl. P. C. and as such the provisions of S. 451 and 457 were attracted and the Magistrate had every jurisdiction to make an order regarding the release and interim custody, and the order of the Sessions judge, therefore, being illegal deserved to be set aside and that of the Magistrate deserved to be restored. In support of this contention, he strongly relied on the decision in State of Karnataka v. Shivananda, (1977) 2kar. L. J.

452. Mr. B. R. Nanjundaiah, learned high Court Government Pleader, appearing for the respondent-State of Karnataka, on the other hand, argued supporting the order passed by the learned Sessions Judge and he placed reliance on the decision of this Court in Ravindra Patali v. State of Karnataka (1). Taking the first

contention of Mr. Gopalakrishna, it appears, there is not much substance in the same. What is an interlocutory order has not been defined. This was also one of the contentions raised before the learned sessions Judge, and he has rightly rejected the contention after discussing the case law on the point. In *Madhu Limaye v. State of Maharashtra*, AIR 1978 SC.

47. their Lordships of the Supreme Court observed:

"ordinarily and generally the expression 'interlocutory order' has been understood and taken to mean as a converse of the term 'final order'. In volume 22 of the third edition of Halsbury's laws of England at page 742, however, it has been stated in para 1806: -

". a judgment or order may be final for one purpose and interlocutory for another, or final as to part and interlocutory as to part. The meaning of the two words must therefore be considered separately in relation to the particular purpose for which it is required"

. . In para 1607 it is said: "in general a judgment or order which determines the principal matter in question is termed final."

In para 1608 at pages 744 and 745 we find the words: "an order which does not deal with the final rights of the parties, but either (1) is made before judgment, and gives no final decision on the matters in dispute, but is merely on a matter of procedure, or (2) is made after judgment, and merely directs how the declarations of right already given in the final judgment are to be worked out, is termed "interlocutory". An interlocutory order, though not conclusive of the main dispute, may be conclusive as to the sub-ordinate matter with which it deals. "

(4) PROCEEDING further their Lordships observed:

"although the words occurring in a particular statute are 'plain and unambiguous, they have to be interpreted in manner which would fit in the context of the other provisions of the statute and bring about the real intention of the legislature. On the one hand, the legislature kept intact the revisional power of the high Court, on the other, it put a bar on the exercise of that power in relation to any interlocutory

order. In such a situation it appears to us that the real intention of the legislature was not to equate the expression "interlocutory order" as invariably being converse of the words "final order". There may be an order passed during the course of a proceeding which may not be final in the sense noticed in Kuppaswami's case, AIR 1949 FC (1) (supra), but, yet it may not be an interlocutory order pure or simple. Some kinds of order may fall in between the two. By a rule of harmonious construction, we think that the bar in sub-sec. (2) of S. 397 is not meant to be attracted to such kinds of intermediate orders. They may not be final orders for the purpose of Art. 134 of the Constitution, yet it would not be correct to characterise them as merely interlocutory orders within the meaning of S. 397 (2). We may, however, indicate that the type of order with which we are concerned in this case, even though it may not be final in one sense, is surely not interlocutory so as to attract the bar of sub-sec. (2) of S. 397. In our opinion it must be taken to be an order of the type falling in the middle course. "

Mr. Gopalakrishna invited my attention to the decision in Nathu Lal v. State, 1976 Cr. L. J. 358. and argued, the order passed under S. 451 Cr. P. C. was in the very nature interlocutory, because it was an order passed during the pendency of the proceeding and subject to the final determination on the conclusion of the trial. No doubt, the decision supports his contention. But with due respect, I am unable to persuade myself to accept it as laying down the correct law on the question. The provisions of S. 451 Cr. P. C. empowers the Court to make such order as necessary for interim custody of the property produced before the Court during the enquiry and trial and any order passed under S. 451 Cr. P. C. , so far as that stage is concerned, would be final between the parties, in that it concludes who among the contending parties would be entitled to the interim custody and is final as between the contending parties and is therefore open to revision.

(5) THE question, therefore, that requires to be considered is whether on the given facts of the present case, on the receipt of the report under sub-sec. (3) of S. 62 of the Act and without more the Magistrate will have the jurisdiction to make any order regarding the disposal, for that matter, release and interim custody of the forest produce or the vehicle seized under S. 62 of the act. S. 64 of the Act reads as follows:

"64. Procedure on receipt. . by magistrate of report of seizure.-Upon the receipt of any report under subsection (3)of Section 62, the Magistrate shall, with all convenient despatch, take such measures as may be necessary for the arrest and trial of the offender and the disposal of the property according to law. "

(6) FROM a reading of the section, though, it would appear, on receipt of the report under sub-sec. (3) of S. 62 of the act, the Magistrate is empowered with all convenient despatch to take such measures, as may be necessary, not only for the arrest and trial of the offender, but also measures regarding the disposal of the property according to law and as held by this Court in State of karnataka v. Shivananda (2), the words 'disposal' and 'according to law' occurring in S. 64 of the Act and the context in which they are used would have reference to the provisions of the code of Crl. Procedure. But even so in the absence of any special provision made in the Act' the provisions of S. 451 and 457 Cr. PC. would not automatically be attracted merely on the making of the report regarding the seizure to the Magistrate under S. 62 (3) of the Act, unless the forest produce or the vehicle seized is also produced before the Magistrate and an enquiry or trial of the forest offence is pending before the Magistrate, because while S. 451 Cr. P. C. , deals with the procedure regarding the disposal of the property when the property is produced before the criminal Court during any enquiry or trial, S. 457 Cr. P. C. , deals with the procedure regarding the disposal of the property whenever seizure of the property by any Police Officer is reported to the Magistrate under the provisions of the Code. Here, in the case on hand, neither there was any enquiry or trial of the forest offence, alleged to have been committed, pending before the Magistrate nor the forest produce nor the vehicle itself was produced before the Court. Admittedly the forest produce and the vehicle were seized by the Range forest Officer, and not by the Police as provided under the Code of Criminal procedure So the provisions of Ss. 451 and 457 were not at all attracted. It may be mentioned here, there was not even a report regarding the seizure under S. 62 of the Act, sent to the magistrate. What was sent was only a first Information Report in Form No. 17 of the Manual, under Rule 65 (1) of the Rules under the Act regarding the illicit transportation of the fire-wood belonging to the Government. No report regarding the seizure, as provided under S. 62 (3) of the Act in form No. 20 (Rule 67 (3), prescribed under the Manual, was sent to the magistrate. Under

S. 64 of the Act, regard being had to the expressions "according to law", used in the Section, the Magistrate gets jurisdiction to make an order regarding the release or interim custody of the forest produce or the vehicle seized under S. 62 of the act on the report made to him by the range Forest Officer under sub-sec. (3) of that section when such forest produce or the vehicle seized under S. 62 is produced before the Court during enquiry or trial as provided under section 451 Cr. P. C. A report made to the Magistrate regarding the seizure under S. 62 (3) of the Act, without more will not give jurisdiction to the magistrate to make any such order regarding release or interim custody of the forest produce or vehicle seized under Sec. 62 of the Act. The provisions of S. 457 Cr. P. C. , are attracted to a case where the seizure is made by the Police under the Cr. P. C. The decision in State of Karnataka v. Shivananda (2) has no bearing on the facts of the present case. The question of law canvassed in that case was that since S. 71a of the Act empowered the forest Officer referred to therein to order confiscation of the property seized under S. 62 (1) of the Act, it was for such authorised officer to make an interim order regarding the custody and not the Magistrate. Repelling that contention and after referring the relevant provisions of the Act, Range Gowda, j. , who rendered the decision in that case observed:

"there is no provision taking away or curtailing the power of a Magistrate to make an order regarding the disposal of property seized under S. 62 Karnataka Forest Act (subject to the provisions of Ss. 63 and 66). The mere fact that Sec. 71a of the Karnataka Forest Act confers power on the authorised officer referred to therein to make an order of confiscation does take away the jurisdiction of the Magistrate to make an order under S. 451 Cr. P. C. "

There cannot be any quarrel regarding that proposition of law laid down by his Lordship in that case. The question of law as now raised in this case, whether the Magistrate had jurisdiction to make any order regarding the disposal under S. 451 Cr. P. C. in respect of the property not produced before the Court during enquiry or trial, did not arise for consideration. The question whether the provisions of S. 457 were attracted to the seizure reported under S. 62 of the Act by the range Forest Officer (and not by the police), also did not arise for consideration.

(7) IN *Ravindra Patali v. State of Karnataka* (1) what happened was, when the Police seized the car under S. 62 for the alleged commission of the offence under S. 86 and 87 of the Act r/w Ss. 379 and 411 IPC and registered a case in Crime No. 164/77 and reported the seizure of the car to the Magistrate and on coming to know of the same, an application was filed before the Magistrate under Sections 451 and 457 cr. P. C , for interim custody and in the meanwhile the police also made an application before the Magistrate requesting permission of the Magistrate to produce the car and the properties before the authority empowered under section 71a of the Act for confiscation and while granting permission the magistrate, ruled that the power in regard to disposal of the property was with the authorities prescribed under ss. 71a and 71b onwards of the Act and as such the application for interim custody made was not maintainable before him. Being aggrieved, the applicant approached the High Court questioning the correctness of the said order permitting the Police to produce the property before the concerned authority. After referring to the provisions of S. 451 and 457 Cr. PC it was held Sec. 451 would not be applicable to the facts of the case, because only the report of seizure of the forest produce had been sent to the magistrate and no enquiry or trial in regard to the offence was pending before the Magistrate. Moreover the property concerned was not produced before the Magistrate and the powers under S. 457 Cr. P. C, can be exercised by the Magistrate whenever seizure of the property is made under the provisions of Crl. Procedure Code by the police Officer and the report is made under the provisions of the Code. The report of seizure having been made to the Magistrate by virtue of S. 62 (3) of the Act, the provisions of S. 455 cr. P. C. , would not have any application and on receipt of such reports courses open to the Magistrate are by s. 64 of the Act. Further, after noticing the decision in *State of Karnataka v. Shvananda* (2) and the law, laid down that S- 71a of the Act does not override the general provisions contained in s. 451 Cr. P. C, it was observed, the stage envisaged by Sec. 451 of the cr. P. C. is reached when the properties seized are produced "before the magistrate, and the Magistrate is seized with the enquiry or trial of the case, and that provision deals with what would be the proper custody of the property for the purposes of the enquiry or trial and not with the question as to who is entitled to possession of the property. It is thus plain, merely on receipt of the report regarding the seizure under s. 62 (3) of

the Act, the Magistrate will not have jurisdiction to make any order regarding the release or interim custody of the forest produce or the vehicle seized under Sec. 62 of the Act. The magistrate gets jurisdiction only when the forest produce or the vehicle seized under Sec. 62 of the Act by the Forest officer, is also produced before the magistrate during enquiry or trial. As already stated above, no report recording the seizure was also sent by the r. F. O. Only a First Information Report of the offence was sent. The Magistrate had, therefore, no jurisdiction to make an order regarding the dispose by release or interim custody of the vehicle seized under S. 62 of the Act and the Sessions Judge was, therefore, perfectly right in exercising the revisional powers in interfering with the order passed by the Magistrate regarding the interim custody and it called for no interference by this Court. It was however, contended, when the app had consented to the making of such order, it was not proper for the sessions Judge to interfere with that order. But no amount of consent by a party will give jurisdiction to the Court to make an order unless the Court has jurisdiction to make such order. Therefore, the fact that APP had consented to making of the order is no reason to hold that the Sessions Judge was not right in exercising the revisional powers and setting aside the illegal order made by the Magistrate without jurisdiction.

(8) IN the result and for the reasons stated above, the revision has to fail and it is accordingly dismissed.

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