

(1972) 01 GUJ CK 0002
In the Gujarat High Court

Abdul Rehman Adambhai Sheth

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 31-01-1972

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 169, 170, 170, 173(1)(a), 516A

Citation : (1973) 14 GLR 66

Hon'ble Judges : D.A Desai, J

Bench : Single Bench

Judgement

D.A Desai, J.—Respondent No. 2 Mahmadbhai Kalubhai lodged an information of an offence at Deesa Police Station on 16th April 1971 alleging that the present petitioner has committed an offence of criminal breach of trust or cheating in respect of a jeep car bearing No. GJC. 1878 and the offence was registered. The Investigating Officer in course of investigation seized the jeep car from the petitioner and thereafter followed a very curious and thoroughly illegal procedure of handing over jeep car to the petitioner after taking a bond from him without reporting seizure to the Magistrate. After handing over jeep car in question, the Investigating Officer sent a yadi on 26th May 1971 to the Judicial Magistrate First Class intimating to him the fact of handing over of jeep car to the petitioner. The learned Magistrate by his order dated 7th July 1971 called upon the Investigation Officer to explain how he handed over jeep car in question to the petitioner without the permission of the court and directed ,the Investigating Officer to produce the jeep car before him. Against this order, the petitioner preferred Criminal Revision Application Mo. 23 of 1971 to the Court of Sessions Banaskantha at Palanpur. The learned Sessions Judge dismissed the revision application and confirmed the order of the learned Magistrate. The petitioner has challenged the correctness of this order in this revision application.

2. The only question that arises for the consideration of this Court r whether the property in respect of which an offence appears to have been committed and which was seized by the Investigating Officer in the course of investigation, can

be disposed of by a police officer without any order being obtained from the Magistrate having jurisdiction. What has been done in this case is that the Investigating Officer after registering the offence of criminal breach of trust or cheating, called upon the petitioner to produce the jeep car against whom information of offence was lodged and on petitioner producing the jeep car the Investigating Officer took a bond from him and returned the jeep car to him without notifying the seizure of the jeep car to the Magistrate. Of course a condition was incorporated in the bond that the petitioner should produce the jeep car as and when he is called upon to do so. The learned Magistrate has directed the Investigating Officer to produce the jeep car; and this revision application arises from that order.

3. Mr. S.K. Zaveri, learned advocate urged that looking to the scheme of the Criminal Procedure Code and especially Chapter XIV till completion of the investigation and submission of the report, either u/s 169 or u/s 170 and 173(1) (a), the Investigating Officer has power to deal with the property seized by him in the course of investigation without reference to the Magistrate.

4. Chapter XIV confers powers of investigation upon the police officers. Section 165 enables a police officer making investigation to take search of any place, if he has reasonable grounds for believing that anything necessary for the purposes of investigation into any offence which he is authorised to investigate may be found in any place within the limits of the police station of which he is in charge, or to which he is attached. Sub-section (5) of Section 165 casts an obligation upon the officer conducting search to send a copy of the record of the search forthwith to the nearest Magistrate empowered to take cognizance of the offence and the owner or occupier of the place searched shall on application be furnished with a copy of the same by the Magistrate. Chapter XLIII of the Criminal Procedure Code makes provisions for the disposal of the property. Section 516A enables any Criminal Court, to make any order it thinks fit for the proper custody of any property regarding which any offence appears to have been committed or which appears to have been used for the commission of any offence, when such property is produced before the court, pending conclusion of the inquiry or trial and if the property is subject to speedy or natural decay for the disposal thereof. Section 517 enables the court to make order for disposal of property regarding which offence appears to have been committed at the conclusion of inquiry or trial. Then comes Section 523 which is material. It reads as under:

523. (i) The seizure by any police officer of property taken u/s 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the, commission of any offence, shall be forthwith reported to a Magistrate, who shall 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.

Section 524 prescribes procedure where no one comes forth to claim property within six months from its seizure. Section 525 enables the Magistrate to direct sale of the property under certain circumstances therein mentioned. Next important section of which notice must be taken is Section 550 which reads as under:

550. Any police-officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which creates suspicion of the commission of any offence. Such police officer, if subordinate to the officer in charge of a police-station, shall forthwith report the seizure to that Officer.

5. Power to search and power of seizure of property are two independent and separate powers. Section 165 which finds its place in Chapter XIV which prescribes procedure for investigation of cognizable offence by a police officer in charge of a police station, confers powers on the police officer to take search of immovable property if the conditions therein mentioned are otherwise satisfied. In the course of the search, any property, in respect of which an offence appears to have been committed, is recovered or found, the police officer has power to seize it. But power of seizure is not to be found in Section 165. It has to be found in some other sections of the Criminal Procedure Code. And that section appears to be Section 550. If Section 550 confers general power of seizure of property, apart from this specific power, power of seizure may also be found in some other sections of Criminal Procedure Code such as Section 51 which enables the police officer to arrest any person to take search of his person and seize all the articles found on his person other than the necessary wearing apparels. Section 96 confers powers upon the court to issue a search warrant and authorise by the said warrant not only to search the place in the manner specified in the warrant but take possession of the property, document, wills etc. and produce them before the court. This will be seizure of property under the authority of search warrant. But Section 165 does not confer any specific power of seizure. It in fact confers power to search any place. While taking search, if the officer taking search comes across anything which can be seized u/s 550, he would be exercising the power of seizure conferred by Section 550. Therefore, power of search and power of seizure would be exercised under two independent powers conferred by two independent sections of the Criminal Procedure Code.

6. The property can be seized either in course of investigation or it can be seized even where the police officer is not conducting investigation in respect of a cognizable offence, but when he comes across the property which is alleged or suspected to be stolen or which may be found in the circumstances which create suspicion of the commission of any offence, he can still seizure it. But seizure while in course of investigation and seizure de hors the investigation, would not make any difference as far as power of the police officer seizing the property to deal with it is concerned. No provision has been pointed out to me in the long discussion at the hearing of this Revision Application from the Criminal Procedure

Code which enables a police officer seizing the property to dispose it of without reference to the Magistrate. It was however pointed out that Section 170 of the Criminal Procedure Code, upon a proper construction, may indicate that it is not obligatory upon the Investigating Officer to send all the properties seized by him in the course of investigation to the Magistrate and this would imply that he can deal with the property without reference to the Magistrate. Sub-section (2) of Section 170 was relied upon in support of this submission. Sub-section (2) of Section 170 provides for forwarding accused person to the Magistrate at the conclusion of the investigation and a duty is cast upon the Investigating Officer to send along with the accused any weapon or other article which it may be necessary to produce before the Magistrate. But it was pointed out that the expression which it may be necessary to produce before him" would indicate that it would be for the Investigating Officer to decide what is necessary to be produced out of those things seized by him and what is not necessary to be produced which he may himself deal with. The expression is not open to this construction. The Investigating Officer while forwarding the accused to the court at the conclusion of the investigation has to submit a report as required by Section 173(1)(a) and also send the weapon and other article, which would be part of the evidence in the case, to the Magistrate. Even if anything seized is in the opinion of the Investigating Officer not necessary to be produced, there is nothing in Sub-section (2) of Section 170 which would enable the Investigation Officer to deal with it himself. When specific provisions have been made for disposal of the property seized by the police officers in exercise of the powers conferred upon them by the Criminal Procedure Code, it is not possible to read such power by necessary implication. The power has to be specific, clear and unambiguous. There is no provision which enables the Investigating Officer who has seized any property to deal with it and to dispose it of without reference to the Magistrate.

7. There are two distinct stages at which question of disposal of property would arise. First stage is when it is seized and second stage is when it is produced before the court. As soon as the property is seized Section 523 confers a duty upon the police officer to report seizure to the Magistrate. Even Sub-section (5) of Section 165 also makes provision for report of the search and seizure to be forthwith sent to the Magistrate. It would thus appear that as soon as the police officer in exercise of the power conferred by Criminal Procedure Code seized any property a duty is cast upon him to report seizure forthwith to the Magistrate. Now such a provision must not have been made as a mere formality for information to the Magistrate. If a duty is cast on the police officer to report seizure of the property forthwith to the Magistrate and if no provision is pointed put to me conferring power upon the police officer to dispose of the property seized by him without reference to the Magistrate or court, it is not possible to read such a power by the necessary implication in Section 170(2).

8. Section 516A and Section 517 deal with disposal of property after it is produced before court. Section 516A enables the court to make an order for

interim custody of property pending trial of the offence in the investigation of which such property is seized. Section 517 confers power on the court to dispose of the property at the conclusion of the inquiry or trial. In both the cases the court can deal with the property only after it is produced before the court. Question is : how is the property seized by a police officer to be dealt with at a stage anterior to the stage of its production before the court ? Section 523 furnishes a complete answer.

9. Section 523 provides that the police officer seizing any property u/s 51 or alleged or suspected to be stolen or found under circumstances which creates suspicion of the commission of any offence, shall forthwith report it to the Magistrate. At the stage when Section 523 comes into play it is anterior to the submission of the charge-sheet or what is styled as police report u/s 173(1)(a) At the conclusion of the investigation it is incumbent upon the Investigating Officer to produce the accused along with the property seized by him before the Magistrate and thereafter the court can deal with the property either u/s 516A or 517 as the case may be But Section 523 comes into play at a stage anterior to the submission of the charge-sheet. The broad language in which sec 550 is couched would enable the police officer to seize almost all kinds of no party m respect of which an offence is or appears to have been committed" As pointed out earlier Section 51 enables a police officer to take search of the person of any one who is arrested either under the authority of a warrant or even without a warrant. Any property recovered from the person of such person would amount to seizure and will have to be forthwith reported to the Magistrate. Now, arrest may be on account of an information of cognizable offence alleged to have been committed by that person There fore seizure would be in the course of investigation, and yet in view 5 the language of Section 523 which specifically refers to the seizure of the property u/s 51, such seizure would have to be reported forthwith to the Magistrate. What distinction then can be drawn with regard to property seized from a place, search of which is taken under sec 165 Ton both the cases if the property recovered is alleged or suspected to have been stolen or found under circumstances which create suspicion of commission of any offence, its seizure will have to be reported to the Magistrate forthwith and it is assured by not only Section 523 but Sub-section (5) of Section 165

10. It was however contended that before any property can be seized u/s 550, it must be the property which is either alleged or suspected to be stolen or found under circumstances which create suspicion of the commission of an offence. It was further contended that the notice officer may have to attach any property which may not be alleged or suspected to be stolen or which may not have been found under circumstances which create suspicion of commission of offence. Seizure of such properly would not be u/s 550 nor would its seizure be governed by sec 523. Mr. Zayeri submitted that the property alleged or suspected to be stolen is entirely different from the property which can be styled stolen property". "Stolen property" is defined in Section 410 of the Indian Penal Code to mean the property, the possession whereof has been transferred by theft, or

by extortion, or by robbery and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed. Now, it must forthwith be conceded that the property obtained by deception or cheating would not come within the definition of the expression "stolen property". In this case however the allegation is that the petitioner committed criminal breach of trust alternatively cheating in respect of the jeep car. If the charge of criminal breach of trust is brought home to the petitioner, a property in respect of which criminal breach of trust appears to have been committed would be covered by the definition of expression "stolen property". It was however urged that expression in Section 550 and Section 523 namely "property which is alleged or suspected to have been stolen would not connote a stolen property as defined in Section 410 of the Indian Penal Code. It was urged that the expression only refers to property which is subject matter of theft only. There is no merit in this submission. In order to avoid repeated use of the word "property" the expression used in Section 550 is property which may be alleged or suspected to have been stolen". Adjective "stolen" would qualify the word "property". For the purpose of proper drafting expression used is "property which may be alleged or suspected to be stolen", meaning thereby that property which may be alleged or suspected to be stolen property. The word "stolen" is used as an adjective and not as verb. My attention was drawn to *Purshottam Das Banarsidas Vs. State*, in which it was observed that definition of "stolen property" as set out in Section 410 of the Indian Penal Code is of no avail when one has to interpret the words "alleged or suspected to have been stolen". With respect, it is not possible to accept the observation that the word "stolen" is used as verb and not as adjective. Therefore whenever any property which would be covered by definition of "stolen property" in Section 410 is alleged or suspected to be stolen property it would be within the powers conferred by Section 550 of the Criminal Procedure Code on the police officer to seize it and its disposal would definitely be governed by Section 523 because identical expression has been used in both the sections.

11. Mr. Zaveri next contended that the power to dispose of property is administrative or executive power of the police officer and even if the property is seized in the course of investigation, it would not be necessary for the police officer to refer the matter to the Magistrate, until the charge-sheet is submitted and property is produced before the court. Mr. Zaveri went so far as to urge that it would be open to the police officer to dispose of the property without producing it "before the court. As I have pointed out above, there is no specific provision conferring such power on the police officer. But Mr. Zaveri again relied upon *Parshottam Das's* case (supra) wherein a view was taken that the code contains no provision for disposal of property seized during the investigation which results in a final report; evidently it leaves it to the police to dispose of, and the Magistrate has nothing to do with it. It was observed that such order of disposal is intended by the Code to be an executive order of the police. Again, with respect, it is not possible to agree with this observation. Whenever a property is

seized either in the course of investigation or dehors the investigation but in exercise of the powers conferred by the Criminal Procedure Code, it would not be open to the police officer to dispose it of without reference to the Magistrate. In fact, as stated earlier there were only two stages at which the question of disposal of property would arise. If the property is seized in the course of investigation and requires to be dealt with before the charge-sheet is submitted, Section 523 would be attracted. If it is required to be disposed of after the charge-sheet is submitted when the property in question would be produced before the court, Sections 516A and 517 would come into play. Section 523 appears to be a general provision applicable to all cases before an inquiry or trial commences. This view finds support from the very old decision of the Bombay High Court in *Re. Ratan Lal Rangildas* ILR 17 Bom. 748. It was a decision prior to the introduction of the Criminal Procedure Code of 1898. But the section appears to be couched almost in the same language. In that case it has been held that Section 517 would apply to all properties produced before the court in an inquiry or trial; while Section 523 would confine to the property not so produced, but still in the possession of the police who has seized it, but to whom the Legislature did not see fit to entrust the disposal thereof, and so conferred that power on the Magistracy alone. In *Suraj Mohan Babu Mishra v. State of Gujarat* 1 Guj.L.R. 974 N. G. Shelat J. has also reached the same conclusion. In passing Mr. Zaveri also drew my attention to *Nandiram v. State* 7 Guj.L.R. 866, wherein it was observed that the register maintained by the Regional Transport Authority would furnish good evidence about title to motor-vehicles. At present I am not called upon to dispose of any property and therefore this second decision would not be relevant for the purpose of the point under consideration.

12. Turning to the facts of the present case, the Investigating Officer has handed over the jeep car in question to the petitioner without the order of the court after taking a bond from the petitioner to produce it as and when he is called upon to do so. If the Investigating Officer took a bond from the petitioner, it would necessarily mean that he has seized the jeep car and then disposed it of by handing it over to the petitioner, after taking bond from him. Now, the jeep car was seized in the course of investigation which appears to have been done because the petitioner was asked to execute a bond after the offence concerning the jeep car was registered at the police station. Therefore, the jeep car appears to have been found under circumstances which create suspicion of commission of an offence or it is a property in respect of which an offence appears to have been committed. It was seized in the course of investigation. It was incumbent upon the Investigating Officer to refer the matter to the Magistrate u/s 523. That has not been done. The Investigating Officer has exercised power which he did not enjoy. This action is thoroughly illegal. Therefore, the learned Magistrate was justified in calling upon the police officer and the petitioner to produce the jeep car and therefore, no case is made out to interfere with the order.

Accordingly, this revision application is dismissed. Rule is discharged. Interim relief granted on 14th September 1971 is vacated.