

(1990) 08 MP CK 0023

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 37 of 1987

Balwant Singh and Another

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 31-08-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 452

Citation : (1993) 38 MPLJ 306 : (1993) MPLJ 306

Hon'ble Judges : K.L. Shrivastava, J

Bench : Single Bench

Advocate : K.K. Shrivastava, for the Appellant; P.K. Saxena, for Respondent
Nos. 2 and 3 and S.S. Swami, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Shrivastava, J.

This order shall also govern the disposal of Criminal Revision No. 306/86 (Nandlal v. Balwant Singh) which also arises out of the appellate order dated 26-9-1986 passed by the Addl. Sessions Judge, Neemuch in Cr. A. No. 43/85 u/s 454(1) of the Code of Criminal Procedure, 1973 (for short the "Code") whereby setting aside the order passed by the learned trial Magistrate in favour of the N. A. No. 2 Mangilal, he has remanded the case for fresh order after giving opportunity of hearing to the petitioners.

Circumstances giving rise to these revision petitions are these -- Nandlal N. A. No. 3 in the present revision, on 21-11-1978 filed a criminal complaint in respect of offence u/s 379 of the Indian Penal Code in the Court of J.M.F.C., Javed (later on registered as Criminal Case No. 101/81), alleging that he had purchased the truck in question which is registered in his name for Rs. 33,000/- after borrowing Rs. 9,500/- from the N. A. No. 2 Mangilal, out of which he has already repaid Rs. 2,000/-. It was on 15-9-1978, when the truck, as usual, was kept in front of his residence, the N. A. Mangilal removed it against the balance of Rs. 7,500/- out of

the loan amount of Rs. 9,500/- and is guilty of having committed theft. The defence of Mangilal was that the truck was purchased by him and Nandlal jointly both contributing equally towards the price. He denied that he had removed the truck.

Petitioner No. 1 Balwant Singh is the brother of Nandlal and the petitioner No. 2, Tulsiram is the son of the said Balwant Singh.

In the aforesaid criminal case Balwant Singh was examined as D.W.2 and had stated that the truck was purchased by Nandlal and Mangilal in partnership though it was registered only in the name of Nandlal and he is the ultimate purchaser. Tulsiram was examined as D.W. 3.

Along with the complaint, an application u/s 94 of the "Code", for issue of search warrant was filed. The learned trial Magistrate did not issue any search warrant but sent a copy of the complaint to the Police, Javed for investigation, directing that if during investigation it is disclosed that offence has been committed in respect of the truck, the same be seized and be produced in the Court. The Police seized the truck, which was found in the Bada in front of the residence of Nandlal and Balwant Singh from the possession of Tulsiram and produced it before the trial Court, which on 18-12-1978 ordered that the interim custody of the truck be handed over to Nandlal as against the claim of Mangilal, who unsuccessfully challenged the order in the Court of Session and in the High Court, for such custody.

Cognizance of the offence was taken on the complaint filed by Nandlal and at the conclusion of the trial the learned Magistrate by his judgment dated 11-2-1985, observing that the defence version is probable, acquitted Mangilal holding that the alleged offence u/s 379, Indian Penal Code has not been proved beyond reasonable doubt.

Regarding the truck, the learned trial Magistrate observing that it is registered in the name of Nandlal held him entitled to its possession. Aggrieved by the order u/s 452 of the "Code" regarding the truck, Balwant Singh and Tulsiram preferred the aforesaid criminal appeal u/s 454(1) of the "Code".

It may be stated that the petitioner Balwant Singh has instituted a Civil Suit against Nandlal (C. S. No. 163-A of 1981) in the Court of Addl. District Judge, Neemuch claiming declaration of title over the truck and for permanent injunction.

Balwant Singh and Tulsiram have preferred the present revision petition and contend that the learned A. S. J. should have set aside the order passed by the Magistrate and should have held that they are entitled to the possession of the truck.

The contention of Nandlal in his Revision No. 306/86 is that the appeal should have been dismissed and the order remanding the case is improper.

The point for determination is whether the revision petitions deserve to be allowed.

Section 452 of the "Code" relates to order for disposal of property at the conclusion of enquiry or trial. Sub-section (1) thereof is in these words: --

452(1) "When an inquiry or trial in any criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for (he commission of any offence."

Sub-sections (2), (4) and (5) also embody very material provisions in this regard.

In the decision in Gaya Prasad's case, 1989 MPLJ 635 - 1988 JLJ 595 it has been pointed out that it is for the Court to decide in each case, in the background of its facts and circumstances, whether it is inclined to incorporate the order as to the disposal of the property in the main judgment or would choose to draw separate ancillary proceedings. The decision points out that it is necessary to give the person, likely to be affected by the order, an opportunity of being heard.

The decision in Bhagchand's case 1972 MPLJ 14 relates to Section 517 of the repealed Code, 1898 (Section 452 of die "Code" embodies the coresponding provision). In the aforesaid decision, pointing out that the property in regard to disposal of which the Court is called upon to make an order is one regarding which an offence appears to have been committed or which has been used in the commission of the offence, if has been observed thus:--

"The test for restoration of the property to the original owner u/s 517 is not whether the accused before the Court has been convicted under the charge, but whether any offence has been committed regarding the property. Section 517 does not direct return of the property to the original owner in so many words. It; should be restored backwards to the stage at which no offence has been proved to have been committed. If it has changed hands, the Court will examine backwards each of the stages and stop at the stage when no offence is proved. If it is at the first stage itself the property shall be restored to the person from whom it has been taken. It is to state the position too widely to state that where there is an acquittal with benefit of doubt, property must be restored to the original owner. If it is an acquittal with benefit of doubt to the person on trial while it is found that the offence has been committed then certainly the restoration will be to the original owner. But where the benefit of doubt relates to the commission of the offence itself the general principle that the property should be restored to the person from whom it is recovered should followed."

It may be pointed out that Section 452 of the "Code" is not concerned with the question of title to the properly. That question properly falls within the jurisdiction of Civil Court For an order u/s 452 of the "Code", what the Court has

to find out is the entitlement for the possession of the property and the order passed thereunder is subject to the decision of a Civil Court. The discretionary order under tile provision has to be passed on a careful consideration of the material brought on record and as already pointed out after opportunity of hearing to the parties concerned. In the decision in Lala Har Bhagwandas and Another Vs. Diwan Chand, with reference to Sections 439, 520 and 417 of the repealed Code of Criminal Procedure it has been observed as under :--

"Where the party has already resorted to a civil remedy by way of suit, revision petition challenging the order about return of property becomes infructuous. The scope of powers exercisable under Sections 517 and 520 is only summary which does not adjudicate upon the civil rights of parties."

The importance of the question of present possession of the truck till the title to the same is determined by the Civil Court cannot be overemphasized and in the context of the fact that Nandlal and Mangilal had both laid rival claims for its interim custody and the material placed on record during the trial, I am of the view that no exception can be taken to the impugned order.

It may be pointed out that this Court's revisional jurisdiction is not only limited in its scope but is also discretionary. Unless there is gross violation of procedure or perversity in the reasoning, resulting in miscarriage or total failure of justice, no interference is to be made in exercise of that jurisdiction.

In the result, both the revision petitions fail and are dismissed. The record of the trial Court be sent back immediately.