

(1986) 04 OHC CK 0034
In the Orissa High Court
Case No : Criminal Revision No. 107 of 1982

Baratam Jagannath Rao

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 17-04-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452, 454

Citation : (1986) 61 CLT 618 : (1986) 1 OLR 618

Hon'ble Judges : G.B. Pattnaik, J

Bench : Single Bench

Advocate : Manoj Misra, for the Appellant; A.K. Rao, for Opp. parties No. 2, for the Respondent

Final Decision : Allowed

Judgement

G.B. Pattnaik, J.—The petitioner is the informant who lodged the F. I. R. in Koraput Police Station alleging theft of gold ornaments and cash amounting to Rs. 1000/- from his house on 23-7-1978. The Police registered the case u/s 380/457, I, P. C. and in course of investigation, seized M. Os. I to IV from underneath a bush at the instance of the accused and M. O. V. from a jeweller, examined as P. W. 10 in the trial. The learned Subdivisional judicial Magistrate, Koraput, found the accused guilty of the charges and convicted him u/s 380/457, I. P. C. So far as the seized articles are concerned, the learned Subdivisional Judicial Magistrate passed an order in exercise of his jurisdiction u/s 452, Cr. P. C., directing return of M. Os. I to V to the informant after the appeal period was over. The accused preferred an appeal against his conviction and sentence passed by the learned Subdivisional Judicial Magistrate. No appeal was, however, preferred by any person against the direction of the Magistrate regarding the disposal of the seized articles.

2. The learned Sessions Judge on consideration of the evidence acquitted the accused. There after, P. W. 10 who is opposite party No. 2 in the present petition filed an application on 9-12-1981 without even serving a copy of the same on the

informant before the learned Sessions Judge claiming that he was the owner of M. O. V having purchased the same bona fide and, therefore, the said M. O. V be returned to him. That application was disposed of by the learned Sessions Judge on 14-12-1981 and by the impugned order, the learned Sessions Judge directed to hold an enquiry and to find out who was entitled by possession of M. O. V and passed an Order as to its disposal in conformity of Section 452 of the Code of Criminal Procedure. Hence, the present revision.

3. The learned counsel for the petitioner contends that the Magistrate after conclusion of the trial having considered the question of disposal of the seized articles including M. O. V u/s 452 of the Code of Criminal Procedure and the said order of disposal not having been set aside on appeal, the Sessions Judge had no jurisdiction to direct a further enquiry into the matter, on the application of P. W. 10 after the disposal of the appeal before him. Mr. Misra, the learned counsel for the petitioner further contends that there is no finding in the judgment of acquittal passed by the learned Sessions Judge that P. W. 10 is the owner of M. O. V and in that view of the matter, the learned Sessions Judge committed an error in directing a further enquiry into the matter by the impugned order. The learned counsel also contends that the order of the learned Sessions Judge dated 14-12-1981 is bad In law since no opportunity had been given to the informant even to file an objection to the petition filed by P. W. 10.

Mr. Rao, the learned counsel for opposite party No. 2 on whose application the impugned order has been passed by the learned Sessions Judge contends that the petitioner is not being prejudiced in any manner since the learned Sessions Judge has directed merely to hold an enquiry and, therefore, this Court should not interfere with the order in question.

4. The rival contentions require careful examination. Coming to the first submission of the learned counsel for the petitioner, it appears from the records of the Court that the learned Magistrate after convicting the accused of the offence u/s 380, IPC, passed an order regarding disposal of the property in exercise of his powers u/s 452 of the Code of Criminal Procedure. The learned Magistrate directed that M. Os. I to V be given to the informant. That order is obviously one under Sub-Section (1) of Section 452 of the Code of Criminal Procedure which can be modified or set aside in appeal. The fact remains that the Sessions Judge though set aside the order of conviction passed by the learned Magistrate, did not set aside the direction of the Magistrate regarding delivery of M. Os. I to V to the informant. That apart, an order passed under Sub-section (1) of Section 452, Cr. P. C., is appellable u/s 454, Cr. P.C., and under Sub-section (1) of Section 454, Cr. P. C., any person aggrieved by the order made by a Court u/s 452, Cr. P. C., can appeal against the same. If P. W. 10 was really aggrieved by the order, then he should have preferred an appeal as contemplated under Sub-Section (1) of Section 454, Cr. P. C. He having not preferred any appeal is not entitled to invoke the jurisdiction of the Sessions judge by filing a petition after disposal of the criminal appeal in my view, the

Sessions Judge has no jurisdiction to entertain the application filed by P. W. 10 before him after disposal of the appeal and, therefore, the impugned order directing an enquiry into the matter at the instance of P. W. 10 must also be held to be bad in law. The contention of the learned counsel for the petitioner on this score must, therefore, be accepted.

5. So far as the second contention of the learned counsel for the petitioner is concerned, I also find sufficient force in the same. The judgment of the learned Sessions judge acquitting the accused though discusses the evidence in detail, but no finding has been arrived at to the effect that M. O. V belongs to P. W. 10. On the other hand, that part of the judgment of the Magistrate directing delivery of M. Os. I to V to the informant has not at all been touched by the learned Sessions Judge. The order of acquittal is on account of the fact that the Sessions judge on analysis of evidence has found that the prosecution has failed to establish the charges beyond reasonable doubt. On a reading of the judgment of acquittal would establish that nowhere the Sessions Judge has indicated that M. O. V belongs to P. W. 10 in that view of the matter, it was not proper for the learned Sessions Judge to entertain the, application later filed by P. W. 10 and to direct an enquiry into the the same. The impugned judgment in my view, therefore, cannot be sustained. It is not necessary for me reconsider the third contention of the learned counsel for the petitioner regarding non-affording of opportunity to file objection to the petition filed by P. W. 10.

6. So far as the contention of Mr. Rao, the learned counsel appearing for opposite party No. 2 is concerned. I am of the view that whether the impugned order causes any prejudice to the petitioner or not cannot be a ground not to interfere with an order which in my view is without jurisdiction. I would, therefore, reject the said submission of Mr. Rao appearing for the opposite party No. 2.

7. In the ultimate result, therefore, the order of the learned Sessions Judge dated 14-12-1981 is quashed. The direction of the learned Magistrate with regard to disposal of the seized articles including M. Os. I to V must be sustained.

This Criminal Revision is accordingly allowed.