
(1989) 09 RAJ CK 0011

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 15 of 1989

Brij Lal Mehta

APPELLANT

Vs

Kamal Meena

RESPONDENT

Date of Decision : 12-09-1989

Acts Referred:

Constitution of India, 1950 — Article 20

Criminal Procedure Code, 1973 (CrPC) — Section 156, 451, 482, 91

Citation : (1989) 2 WLN 474

Hon'ble Judges : Mohini Kapoor, J

Bench : Single Bench

Judgement

Mohini Kapoor, J.—This petition u/s 482. Cr.PC is directed against the order dated 22-12-1988 passed by the Munsif & Judicial Magistrate, Gangapur City. It may be stated that 3 matters have been decided by this order but the accused petitioner is challenging that part of the order by which he has been directed to produce an ox in the court.

2. The complainant non-petitioner filed a report at the Police Station that his ox had been stolen. After investigation a final report was given. The non-petitioner filed a complaint and on this complaint, the court has taken cognizance and at the same time it has ordered that the ox should be produced before the court. It may be stated here that the case of the accused-petitioner is that the ox in question was purchased by him from the complainant.

3. The contention of the learned Counsel for the petitioner is that under the provisions of Section 91 Cr.PC a direction to produce a document or any other thing cannot be given to an accused person. The accused can also not be forced to produce in evidence something which would incriminate him in the commission of an offence.

4. The complainant moved an application before the Magistrate for getting the custody of the ox during the pendency of the trial. It is a case where the ox was not seized by the Police and had not been produced before the court hence it is

contended by the learned Counsel for the complainant that for the purposes of the deciding this application if was necessary that the ox should be produced before the court. Secondly, it is contended that if a Magistrate cannot give directions to the accused for the production of any document or any other thing then in a complaint case relevant document or thing cannot be produced before the court and further no order u/s 451 Cr.PC can be passed in respect of that thing. So meet such a situation, it is suggested that it should be held that the Magistrate can u/s 91, Cr.PC, issue orders to the accused to produce the document or thing

5. The learned Counsel for the petitioner has relied upon *State of Gujarat v. Shyam Lal Mohan Lal Choksi* AIR 1965 SC 1251 where in this matter was considered u/s 94, Cr PC of 1898 which is analogous to Section 91 of the Criminal Procedure Code of 1973 and while dealing with Section 94, Cr.PC (1898) it was held that this provision does not apply to an accused person on its true construction when given to the provisions of Section 94(1) and it was observed as under:

It will be noticed that the language is general, and prima facie apt to include an accused person. But there are indications that the Legislature did not intend to include an accused person. The words "attend and produce" are rather inept to cover the case of an accused person. It would be an odd procedure for a court to issue a summons to an accused person present in court to "attend and produce" a document. It would be still more odd for a Police Officer to issue a written order to an accused person in his custody to "attend and produce a document.

The argument pressed on us that the "person" referred to in the latter part of Section 94(1) is broad enough to include an accused person does not take into account the fact that the person in the latter part must be identical with the person who can be directed to produce the thing or document, and if the production of the thing or document cannot be ordered against an accused person having regard to the general scheme of the Code and the basic concept of Criminal Law, the generality of the word "the person" is of no significance.

6. Referring to Article 20(3) of the Constitution, it was observed that if Section 94 is construed to include an accused person, some unfortunate consequences would follow. It was also laid down:

One of the fundamental canons of the British system of Criminal Jurisprudence and the American Jurisprudence has been that the accused should not be compelled to incriminate himself. The Indian Legislature was aware of the above fundamental canon of criminal jurisprudence because in various sections of the Criminal Procedure Code it gives effect to it.

In view of this background the Legislature, if it were minded to make Section 94 applicable to an accused person, would have said so in specific words. It. is true that the words of Section 94 are wide enough to include an accused person but it is well recognized that in some cases a limitation may be put on the construction

of the wide terms of a statute.

7. The question whether an accused can be given a direction to produce a document or thing has been considered in details in the above decision and as such no further reasons are necessary. To support this view, another case *Laxman v. State* Misc Petition No. 646 of 1989 of this Court decided on 11-9-1989), has been cited in which the above Supreme Court decision has been followed and it has been held that an accused person is not included in "any person" as contemplated in Section 91, Cr.PC (1973).

8. The contention of the learned Counsel for the complainant that the above conclusion would mean that no recovery can be made in complaint cases and this causes failure of justice is to be considered. In this connection it may be said that when a complaint is made before a court, it can be sent for investigation to the Police under the provisions of Section 156(3), Cr.PC and during the investigation, if the Police considers it proper it may recover and seize in property. If it is found that the Investigating Agency is not taking proper steps then the Magistrate can give directions as to the manner in which the investigation should proceed. There is no other procedure for recovery and seizure of articles in a case which has been initiated on the basis of a complaint. It cannot be said that for a complaint case Section 91 should be held to include an accused person but for Police cases it should be held otherwise.

9. In the result, it is held that the order of Magistrate directing the petitioner to produce that ox in the court is an order without jurisdiction and deserves to be quashed. The order dated 22-12-1988 so far as it release to the direction given to the petitioner to produce the ox in court in quashed and to this extent the petition is accepted.