
(2006) 07 JH CK 0133
In the Jharkhand High Court

Dinesh Kumar Gupta

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 26-07-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Evidence Act, 1872 — Section 27

Penal Code, 1860 (IPC) — Section 406, 408, 409

Citation : (2006) 4 JCR 625

Hon'ble Judges : Dilip kumar sinha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.K. Sinha, J.—The petitioner, Dinesh Kumar Gupta, has preferred this revision petition challenging the legality, propriety and correctness of the order dated 6.12.2005 passed by Shri M.C. Narayan, Judicial Magistrate. 1st Class, Dhanbad in G.R. Case No. 2822 of 2002 arising out of Govindpur Barwadda P.S. Case No. 204 of 2002 whereby and whereunder the Court below was pleased to release only Rs. 45,000/- out of total seized amount to the tune of Rs. 2,56,650/-.

2. The petitioner had earlier moved for similar relief for the release of entire seized amount in Cr. M.P. No. 629 of 2003 in the Court, which was dismissed as withdrawn by a Bench of the Court on 27.2.2004 with liberty to the petitioner to move before the Court below for release of the seized amount after conclusion of the trial. Pursuant to that, the petitioner moved for release of the said amount, total to the tune of Rs. 2,56,615/- but by the impugned order only Rs. 45,000/- was released and hence the present Cr. Revision application.

3. The brief fact of the case is that the informant, Rajpal Singh, who was the driver of Truck No. U.P. 80-M/9453. delivered his statement at Barwadda police station. Barwadda More G.T. Road on 28.10.2002 that on 24.10.2002 he had proceeded from Agra carrying mustered oil in his truck in the morning. For Alu Posta in West Bengal with co-driver. Munna Singh and cleaner Jeetu Oraon. After

making delivered of the mustered oil at Alu Posta (W.B.) he proceeded in the night of 26.10.2002 with the co-driver and cleaner for Dhanbad and he arrived at Dhanbad in the morning of 27.10.2002 and stayed in the night intervening on 27/28.10.2002 with the said truck at the petrol pump of Bijay Babu at Barwadda. In the morning of 28.10.2002 at about 5 a.m. he along with Munna Singh went to Jharia for taking token of carrying coal and handed over a sum of Rs. 45,000/- to Jeetu Oraon, the cleaner of the said truck asking him to take care of the truck. When he returned back at about 6.30 a.m. at the Petrol Pump of Bijay Babu where he had parked his truck, he neither found his truck nor the cleaner, Jeetu Oraon. The truck as well as Jeetu Oraon were being searched extensively but could not be traced. The informant-driver alleged that he had reason to believe that the cleaner Jeetu Oraon in criminal breach of trust took away Rs. 45,000/- with the truck to unknown place. On his statement Govindpur (Barwadda) P.S. Case No. 204 of 2002 was lodged.

4. On the same day, i.e. 28.10.2002, as submitted by the learned Counsel for the petitioner, restatement of the informant was recorded u/s 161 of the Code of Criminal Procedure around 16.00 hours and in such statement the informant made an important revelation before the police that he was informed telephonically by the petitioner that proprietor of M/s. Arihant Agency, Mihijam namely Mr. Rajesh Kumar had made over a sum of Rs. 2,20,000/- to the accused-cleaner, Jeetu Oraon while the informant-driver and co-driver Munna Singh had been to Jharia and in this mariner the accused Jeetu Oraon had run away with a total sum of Rs. 2.65.000/-(Annexure-2). The co-driver, Munna Singh in his statement u/s 161 of the Code of Criminal Procedure before the police made a similar statement revealing that accused. Jeetu Oraon had run away with a total sum of Rs. 2.65.000/-. The police on such revelation proceeded to investigate and was able to nab the accused Jeetu Oraon on 20.10.2002. A sum of Rs. 2.56,650/- was recovered on search of his person to which a seizure list was prepared (Annexure-8).

5. The learned Counsel further submitted that the accused Jeetu Oraon after arrestation confessed his guilty and corroborated the allegation of the informant by admitting that when the driver as well as co-driver went to Jharia for taking token of Coal, the proprietor of M/S. Arihant Agency Mihijam came to Barwadda and handed over a sum of Rs. 2,20.000/- and instructed him to deliver the same to the owner. He confessed that finding 2,65,000/- in his possession, he felt temptation to run away with the amount. Since he had knowledge of driving the truck, he took the truck with the said money to Mahuda, Dhanbad and thereafter he was arrested with the total sum of Rs. 2,65,000/- {Annexure4). The statement of the petitioner was recorded u/s 161 of the Cr PC who corroborated the allegation of the informant by admitting that he made payment of Rs. 2.65.000/- to the accused-Jeetu Oraon (An-nexure-5). The petitioner immediately made an application before the Officer-in-Charge of Barwadda Police station for release of the seized money on 1.11.2002 (Annexure6). In order to verify the claim of the petitioner the Investigating officer took the statement of

Rajesh Jain, owner of Arihant Agency Mihijam and he affirmed having given the said amount (Annexure-7).

6. The learned Counsel further submitted that when the police expressed its inability to release the seized amount since the matter was subjudice, the petitioner moved before the trial Court on 9.12.2002 by filing application for the release of the amount which was dismissed on the ground that the petitioner had failed to bring any document on the record that he was entitled to receive the money being one of the partner of Urmila Oil Mills (Annexure 8). The Cr. Rev. No. 233 of 2002 was preferred against the said order before the Additional Sessions Judge XI. Dhanbad who though having being satisfied with the fact that the confessional statement of the accused was corroborated with the statement of the witnesses, dismissed the petition of the petitioner for release of the seized amount on the similar ground as it was earlier held by the Court below (Annexure-9).

7. The learned Counsel pointed out that in the meantime a grave error was committed by the trial Court in framing charge against the accused Jeetu Oraon that instead of mentioning the total amount of recovery with regard to framing of charge only a sum of Rs. 45,000/- was mentioned therein on 19.10.2004. The learned Counsel explained that since the petitioner had no locus standi to seek amendment of charge as he was not a necessary party, no amendment could be carried out. Against that order. Cr. M.P. No. 629 of 2003 was preferred before the Court which was dismissed as withdrawn with the liberty to the petitioner to pray for release of the seized money after conclusion of the trial before the Court below (Annexure-11). The learned Counsel further pointed out that witnesses, who were produced and examined on behalf of the petitioner in course of trial, had consistently maintained that the accused had actually run away with a total sum of Rs. 2.65.000/- against which a sum of Rs. 2.56.650/- was recovered from the possession of the accused Jeetu Oraon and he had confessed his guilty leading to discovery of the stolen amount. The important and relevant depositions of PW-3, PW-4, PW5, PW-6, PW-7 and PW-8 and Investigating Officer, PW-10 are consistent on this fact. The accused Jeetu Oraon was convicted by the judgment dated 5.2.2005 holding him guilty for the offence u/s 409 of the Indian Penal Code.

8. The petitioner moved before the trial Court in view of the liberty given to him by the order of the Court in Cr. M.P. No. 629 of 2003 for release of his seized money on the basis of which Cr. Misc. No. 1 of 2005 was registered but by the impugned order dated 6.12.2005 the trial Court was pleased to release only Rs. 45,000/- in favour of the petitioner out of Rs. 2,56,650/- seized on the ground that the prosecution had proved the delivery of only 45,000/- to the accused in presence of the informant, and hence the present criminal revision for release of the entire amount in favour of the petitioner.

9. Finally the learned Counsel submitted that the impugned order passed by Shri M.C. Narayan Judicial Magistrate. 1st Class in Cr. Misc. No. 1 of 2005 on

6.12.2005 suffers from the vice of non-appreciation of the materials on record and documents submitted therewith being part of the investigation. The trial Court without applying his judicial mind passed the Impugned order in an utmost mechanical manner and failed to consider the statements of the driver-informant and co-driver recorded u/s 161 of the Cr PC besides, their substantive evidences in the trial Court as well as the confessional statement of the accused Jeetu Oraon leading to discovery of Rs. 2,56,650/- from his possession. The Court below further lost sight of the statement of Rajesh Kumar Proprietor of M/s. Arihant Agency. Mihijam recorded u/s 161 of the Cr PC before the police as well as in the Court below as also the statement of the petitioner supporting his claim as the prosecution witnesses. It is important to mention that no person has come forward other than the petitioner to claim the seized money and the prosecution has successfully proved that accused was entrusted Rs. 2,65,000/- of the petitioner's money and out of the said amount, Rs. 2,56,650/- was recovered from his possession but the Court below failed to appreciate the rules governing release of the property. Since the currency notes lying in the Malkhana are susceptible to loss and decay in such circumstances it was necessary in the interest of justice to release the seized amount in favour of the petitioner being the sole claimant. It is not a fact that only a sum of Rs. 45,000/- was released but pursuant to the confessional statement of the accused Jeetu Oraon before the police, a sum of Rs. 2,56,650/- was recovered and this fact could not be controverted at any stage. Learned Counsel submitted that under the circumstances the Court below be directed to release the balance amount in favour of the petitioner immediately.

10. Having regard to the facts and circumstances of the case, arguments on behalf of the petitioner as well as the State. I find that the main contention in the present criminal revision is that after conclusion of the trial and Holding the accused. Jeetu Oraon guilty for the alleged charge and substantive sentence the trial Court released only a sum of Rs. 45,000/- out of total seized amount to the tune of Rs. 2,56,650/-. I further find that initially charge was framed against the accused for committing the criminal breach of trust of a sum of Rs. 45,000/- from one Rajpal Singh for the offence under Sections 406 and 408 of the Indian Penal Code inspite of the fact that there were sufficient materials in the case diary with respect to the seizure of the total sum of Rs. 2,56,650/- but for the reason best known to the Court as well as the Assistant Public Prosecutor, the charge was framed for the criminal breach of trust and for dishonest misappropriation by the servant, a sum of Rs. 45,000/- only. The learned Counsel for the petitioner has pointed out that the statements of PW-3, PW-4, PW-5, PW-6, PW-7, PW-8 and Investigating Officer. PW-10 were consistent on the fact that a sum of Rs. 2,65,000/- were taken away by the accused fraudulently in criminal breach of trust but at no point of time any step was taken by the prosecutor or the Court on its own motion tried to amend the charge against recovery of Rs. 2,56,650/-. I find that there is no claimant other than the petitioner for a sum of Rs. 2,20,000/- on the given facts. The Investigating

officer of the case has admitted the recovery of Rs. 2,56,650/- from the possession of Jeetu Oraon to which the seizure list was prepared in presence of the witnesses and the break up of the said amount has also been given. It is stated that such discovery of the amount was made pursuant to the confessional statement of the accused which is relevant u/s 27 of the Evidence Act.

11. In the facts and circumstances, the order impugned passed by Shri. M.C. Narayan Judicial Magistrate, 1st Class. Dhanbad in G.R. Case No. 2822 of 2002 arising out Govindpur (Barwadda) P.S. case No. 204 of 2002 whereby and whereunder the Court below has been pleased to release only Rs. 45,000/- is set-aside with the direction to pass speaking and appropriate order afresh on the facts on record in so far as release of the seized amount in favour of the petitioner is concerned, in accordance with law. This Cr. Rev. petition is allowed.