
(1991) 01 RAJ CK 0099
In the Rajasthan High Court

Case No : Criminal Revision Petition No. 326 of 1988 and 36 of 1989

Gulab Singh and Mahesh Kumar

APPELLANT

Vs

The State of Rajasthan and Another

RESPONDENT

Date of Decision : 15-01-1991

Acts Referred:

Citation : (1991) 1 RLW 38 : (1991) WLN 23

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.R. Arora, J.—These two revisions arise out of the judgment dated November 7, 1988, passed by the Additional Sessions Judge, Barmer, in Criminal Appeal No. 20 of 1988 Mahesh Kumar v. Gulab Singh and Anr. and I, therefore, propose to decide both these revision petitions by this common judgment.

2. Shri Than Singh lodged a First Information Report on May 29, 1986, at Police Station, Barmer that in the intervening night between May 28/29, 1986 a theft took-place in his house. A case was registered and the police, during investigation, recovered the stolen articles. The police, also, recovered golden ingot, weighing 159.500 grams from Mahesh Kumar. The accused pleaded quality and they were convicted by the learned Chief Judicial Magistrate, Barmer, by his judgment dated May 11, 1988. While convicting and sentencing the accused, the learned Chief Judicial Magistrate ordered that the golden ingot may be delivered to the complainant's brother Gulab Singh. Dissatisfied with this order, ordering for the delivery of the golden ingot to Gulab Singh, Mahesh Kumar filed an appeal before the learned Additional Sessions Judge, Barmer, who, by his order dated November 7, 1988, allowed the appeal in part and set-aside the order giving delivery of the golden ingot to Gulab Singh, as according to the learned additional Sessions Judge, there is no evidence on record from which it could be gathered that the golden ingot belongs to Gulab Singh. The learned Additional Sessions Judge also refused to give the delivery of the golden ingot to Mahesh

Kumar. It is against this order that both these revision-petitions have been preferred by Mahesh Kumar and Gulab Singh.

3. Heard learned Counsel for Mahesh Kumar, learned Counsel for Gulab Singh and the learned Public Prosecutor.

4. It is contended by the learned counsel for Mahesh Kumar and Gulab Singh that the order for the delivery of the golden ingot was passed by the learned Chief Judicial Magistrate without giving any opportunity of hearing and producing the evidence to the petitioners. It is, therefore, contended that as no opportunity was given to them to produce the evidence, therefore, their rights have been adversely affected and the order passed by the learned Chief Judicial Magistrate, as affirmed by the learned Additional Sessions Judge, deserves to be quashed and set-aside. The learned Public Prosecutor, on the other hand, has supported the order passed by the Court below.

5. I have considered the rival submissions.

6. It is not in dispute that the order has been passed by the learned Court below without affording any opportunity to the petitioners to produce evidence. In absence of any evidence on record, it cannot be decided as to who is the person best entitled for the delivery of the golden ingot. It is not in dispute that the golden ingot was recovered from the possession of Mahesh Kumar though at the instance and information given by the accused-persons, and on the other hand, the complainant party has said that the jewellery of the wife of Gulab Singh were taken-away. In this view of the matter, it would be just and proper, in the facts and circumstances of the case, that both the parties may be allowed to produce their evidence and only after production of the evidence, the learned lower Court may decide the question as to who is the person best entitled for the delivery of the golden ingot. If after the evidence is produced, the learned Magistrate comes to the conclusion that the golden ingot does not belong to any of the persons then he can order for the forfeiture of the golden ingot.

7. In the result, both the revision petitions are allowed. The orders dated November 7, 1988, passed by the learned Additional Sessions Judge, Barmer, affirming the order dated May 11, 1988, passed by the learned Chief Judicial Magistrate, Barmer, are Setaside and the case is sent back to the learned Chief Judicial Magistrate, Barmer, to decide the question as to who is the person best entitled for the delivery of the golden ingot, after giving an opportunity for producing the evidence and of hearing to both the parties.