

(1996) 11 KAR CK 0016
In the Karnataka High Court
Case No : Criminal Appeal No. 200 of 1994

Ismail Saval

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

Date of Decision : 08-11-1996

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452 (1), 454

Citation : (1997) 1 ALT(Cri) 523 : (1997) CriLJ 1403 : (1997) ILR (Kar) 728 : (1997) 1 KarLJ 761

Hon'ble Judges : Chidananda Ullal, J

Bench : Single Bench

Advocate : Sri Mahesh for R.B. Deshpande, for the Appellant; B.H. Satish, Govt Pleader, for the Respondent

Judgement

1. The instant appeal is filed u/s 454 Cr.P.C. to challenge the Judgment Dt-28-3-94 in S.C. No. 75/91 in so far as the same related to an order to return a sum of Rs. 7,000/- to the complainant in the case.

2. The brief facts of the case are as follows :

That on a complaint of one Ningappa Gulappa Bisnal, examined as P.W. 1 in the case, who had filed a complaint before the Managuli Police Station as against 12 accused persons under Secs. 447,395 and 342 IPC, and the said Police had registered a case in Crime No. 13/91. It appears that during the course of investigation, a sum of Rs. 7,000/- was recovered from the appellant herein. He had also been examined as P.W. 14 before the Sessions Judge in the above case.

3. The learned Sessions Judge after completion of the trial, on hearing the learned Public Prosecutor and the learned counsel for the accused persons and on appreciation of the evidence on record, had passed the impugned judgment whereby he had acquitted the accused persons. While so doing, the learned Sessions Judge had also passed an order to return a sum of Rs. 8,200/- (marked as M.O. 3 in the case). The learned Sessions Judge further ordered that a sum of

Rs. 1,200/- be paid to one Abdul Majid Bagwan and Rs. 7,000/- to the complainant Ningappa Gulappa Bisnal.

4. The appellant herein had challenged the impugned Judgment limited to the order directing the sum of Rs. 7,000/- to be returned to the complainant - Ningappa Gulappa Bisnal who had also been arrayed as Respondent No. 2 in the instant appeal. Though he was served with notice, he had not chosen to contest the above appeal before this Court.

5. I heard the learned counsel for the appellant Sri Mahesh for Sri R. B. Deshpande and the learned High Court Government Pleader Sri B. H. Satish appearing for the Respondent No. 1 - State.

6. The learned counsel for the appellant submitted that the sum of Rs. 7,000/- was recovered by the Police during the course of investigation in the case and that the appellant herein had also appeared before the Court below and gave his evidence. He had been examined as P.W. 4 as stated above. In his evidence, the appellant had stated before the trial Court that the Police had collected a sum of Rs. 7,000/- from him.

7. The grievance of the appellant is that the Court would not have passed the impugned Judgment with regard to the payment of the sum of Rs. 7,000/- to the complainant, without any notice to him or without there being any enquiry as contemplated u/s 452(1) of Cr.P.C. He had also cited before me two decisions of the Supreme Court reported in Pushkar Singh Vs. State of Madhya Bharat and Another, and State Bank of India Vs. Rajendra Kumar Singh and Others, in support of his above argument.

8. The learned High Court Government Pleader had argued that the appellant would have as well claimed the sum before the Court below if at all he was entitled to the same well before the impugned Judgment was passed by the Sessions Judge and having not done that, it was too late in the day to air his grievance by resorting to the instant appeal before this Court. Therefore, he prayed that the appeal be dismissed.

9. After hearing both sides, I have also perused the records. It is true that a sum of Rs. 7,000/- was seized by the Police on 15-3-91 from the appellant under a mahazar drawn thereto as per Ex. P. 15 - Panchanama. If that is the position, I find some force in the argument of the learned counsel for the appellant that the learned Sessions Judge would not have passed the impugned order to direct the sum of Rs. 7,000/- to be given to the complainant without there being any enquiry as contemplated under Sec. 452(1) of Cr.P.C. after conclusion of the trial. In the case reported in State Bank of India Vs. Rajendra Kumar Singh and Others, , in a similar situation, the Supreme Court held that, though the statute did not expressly require a notice to be issued or a hearing to be given to the parties adversely affected, there is in the eye of law a necessary implication that the parties adversely affected should be heard before the Court makes an order for return of the seized properties, I also feel that the learned Sessions Judge

would have passed such an order only after holding an enquiry thereto after issuing a notice to the appellant herein, particularly when it is borne on the record - Ex. P. 5 that the sum of Rs. 7,000/- was seized from the appellant examined as P.W. 14 before the Sessions Judge.

10. In the result, the impugned Judgment dt. - 18-3-94 in S.C. No. 75/91 passed by the II Addl. Sessions Judge, Bijapur, in so far as the same related to the direction to return the sum of Rs. 7,000/- to the complainant is set aside. The learned Sessions Judge is directed to hold an enquiry in the matter of return of the said sum of Rs. 7,000/- seized by the Police from the appellant after issuing notices both to the complainant as well as to the appellant herein. He is further directed to pass a considered order thereon after hearing the parties.

11. The appeal is accordingly allowed with the above direction.

12. Appeal allowed.