
(1986) 09 RAJ CK 0080
In the Rajasthan High Court
Case No : Criminal Revision No. 232 of 1979

Kripal Singh and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 12-09-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 453
Penal Code, 1860 (IPC) — Section 411, 494

Citation : (1987) 1 WLN 660

Hon'ble Judges : Shobhag Mal Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Shobhag Mal Jain, J.—This revision by the legal representatives of Karam Chand, is directed against the order of the Addl. Munsif & Judicial Magistrate No. 1, Sri Ganganagar, directing delivery of the record gold to Mst. Chinkaur and Mst. Ram Pyari, non-petitioners No. 2 and 3 here in. Three persons, namely, Pat Ram s/o Chet Ram, Path Ram s/o Hira Ram and Mani Ram were tried for the offence under, Section 494 I.P.C. for committing robbery of gold ornaments belonging to Mst. Chinkaur and Mst. Ram Pyari. The prosecution case was that these ornaments were kept by the accused with Karam Chand from where the same were recovered. The case of Karam Chand, however, was that the golden ornaments were pawned with him for Rs. 3000/- by Path Ram. The learned Magistrate convicted accused Path Ram s/o Het Ram and Mani Ram for the offence u/s 411 I.P.C. and while doing so he directed that the gold recovered from the possession of Karam Chand may be returned to Mst. Chain Kaur and Ram Pyari. An appeal against the aforesaid order for returning the property was filed before the Sessions Judge, Sri Ganganagar. The said appeal was heard by the learned Addl. Sessions Judge, who by his order dated 1st May, 1979 dismissed the same. Aggrieved, the petitioners, who are legal representatives of Karam Chand, have filed the present revision petition in this Court.

2. Shri B.R. Arora, counsel for the petitioner has urged that the learned Magistrate while directing that the gold ornaments may be returned to Mst. Chin Kaur and Mst. Ram Pyari, failed to give any notice to Shri Karam Chand to show cause before returning the said property. The learned Counsel has relied on State Bank of India Vs. Rajendra Kumar Singh and Others, where it is said.

In our opinion, there is no warrant or justification for the arguments. It is true that the statute does not expressly require a notice to be issued, or a hearing to be given to the parties adversely affected. But though the statute is silent and does not expressly require issue of any notice 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 property. The principle is clearly stated in the leading case of Cooper v. Wordsworth Board of Works (1863) 14 CB NS 180.

3. The above case does not apply to the facts of the present case. Here the property was merely pledged and Karam Chand did not make any application before the trial Court claiming possession of the same or for payment of money in terms of Section 453 Cr. P.C. This point was not even raised during arguments in appeal before the Sessions Judge. The Addl. Munsif & Judicial Magistrate passed the order as back as July 12, 1977 and it would not be proper now after a period of 9 years to allow the petitioner to raise this question in this Court in revision. When Karam Chand failed even to make a claim for possession of the property before the learned Magistrate, I do not find any error in his order in directing delivery of the property to the owners of the same.

4. The result is, the petition has no force and is dismissed.