
(1970) 02 CAL CK 0011
In the Calcutta High Court
Case No : Criminal Rev. No. 1158 of 1969

Legal Remembrancer

APPELLANT

Vs

Parbati Naskar

RESPONDENT

Date of Decision : 20-02-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 165, 516, 517, 523

Citation : (1971) 1 ILR (Cal) 508

Hon'ble Judges : Sarma Sarker, J; R.N. Dutt, J

Bench : Division Bench

Advocate : Sudhir Gopal Poddar, for the Appellant; Jyolirmoyee Nag, Manjuli Sen Gupta and Chinmay Choudhri, for the Respondent

Judgement

R.N. Dutt, J.—On May 30, 1969, a sub-Inspector of Excise seized car No. WBG 5585 at the crossing of Diamond Harbour Road and Panchanantala Lane within the Behala P.S. at 12-15 a.m. which contained 279 liters of illicitly distilled liquor. The car and the liquor were then produced before the Special Superintendent of Excise, Central Detective Department, who was a "Collector" within the meaning of the Excise Act, and the said Collector made an order that the car and the liquor be kept in Excise custody pending investigation of the alleged offence u/s 46(a) of the Act by the Excise Department. On June 25, 1969, one Ansar Sardar was arrested in connection with this case and, as he failed to furnish surety, under orders of the Collector he was produced before the Sub-Divisional Magistrate, Alipore, who directed his custody in jail on his failure to furnish bail bond of Rs. 5,000 with two sureties of Rs. 2,500 each. On July 11, 1969, one Parbati Naskar, said to be the other accused in the case, surrendered before the Magistrate who released him on bail. Subsequently, he filed an application before the said Magistrate for return of the seized car No. WBG 5585 to him pending investigation by the Excise men. Objection was raised on behalf of the Excise Department. But the learned Magistrate directed that the car should be returned to Parbati Naskar on certain conditions. We find that the car has, in pursuance of this order, been returned to Parbati Naskar. But, subsequently the State has

obtained this Rule against this order of the learned Magistrate directing return of the car to Parbati Naskar.

2. Mr. Poddar, who appears for the State, argues that the Sub-divisional Magistrate, Alipore, had no jurisdiction to make an order for return of the car in question. He contends that the Excise officer seized the car u/s 67 of the Excise Act and u/s 76 of the Act he produced the seized car to the "Collector" within the meaning of the Excise Act and the Collector made an order about instant disposal of the car, namely, made an order that the car should be kept in the Excise custody during pendency of the investigation. The Excise men, it is submitted, never produced the car to the Sub-divisional Magistrate nor did the Excise men ever seek order from the said Magistrate about the disposal of the car pending their investigation, and so, the learned Magistrate had no jurisdiction to make an order about the disposal of the car at that stage.

3. Mrs. Nag, who appears for Parbati Naskar in this Rule, contends that the learned Magistrate had jurisdiction to make an order for return of the car u/s 523 of the Code of Criminal Procedure. Mrs. Nag refers to the Division Bench decision of this Court in Ajoy Raj Singh Vs. Baj Bahadur Singh and Others, and contends that even when a seizure is made during investigation Section 523 of the Code is attracted so as to enable the Magistrate to make an order about disposal of the seized property pending investigation. There in that case we considered the scope of Sections 516A, 517 and 523 of the Code. We said that u/s 516A the Magistrate has jurisdiction to direct disposal of the seized property during any enquiry or trial and u/s 517 of the Code the Magistrate has jurisdiction to make an order about the disposal of the seized property after the trial is over. We further said that in all other cases the Magistrate had jurisdiction to make an order for disposal of the seized property u/s 523 of the Code and, in particular, we held that the Magistrate had such jurisdiction in respect of properties seized during investigation by the Police u/s 165 of the Code. True, the law is as we have explained in that case. But, then we have to see if the facts of the present case do really bring it under the scope and ambit of Section 523 of the Code. The Magistrate can have jurisdiction to make an order u/s 523 of the Code only when he is in season of the seized article. True, it is not necessary that the article should be physically produced before the Magistrate. Section 523 of the Code does not, in fact, even speak about production of the seized property before a Magistrate. But, Section 523 of the Code states that the seizure shall be reported to a Magistrate who shall make such order as he thinks fit in respect of the disposal of such property.

So, the essential condition, which gives jurisdiction to the Magistrate to make an order u/s 523 of the Code, is that the seizure shall have to be reported to the Magistrate. Unless the seizure is reported to the Magistrate, the Magistrate cannot assume jurisdiction to make an order u/s 523 of the Code. Mrs. Nag at this stage refers to a Single Bench decision of the Lahore High Court in AIR 1945 Lahore 47 where the Lahore High Court has said that when a Police officer makes

a seizure under the conditions contained in Section 523 of the Code, he has to report the seizure to a Magistrate. But, if in a certain case he has not done his part of the duty and he has not submitted a report which he is required under the law to do, even then the Magistrate can assume jurisdiction to make an order about disposal of the seized property. But, that was a case where the seizure was made by a Police officer under the conditions contained in Section 523 of the Code. But, here in this case the seizure was not made by a Police officer, but the seizure was made by an Excise officer and the Excise officer was not required under any provisions of the Excise Act to report the seizure to a Magistrate. He was, on the other hand, required u/s 76 of the Excise Act to report the seizure to the Collector of Excise and, in fact, he* did report the seizure to the Collector who has the authority under the Excise Act to make an appropriate order about disposal of the seized property and, in fact, he did make an order in respect of the seized car to be kept in Excise custody during investigation. So, as the facts of this case, we find that the seizure was not made by a Police officer and so, strictly speaking, it does not come under the terms of Section 523 of the Code. Moreover, as we have said, the Excise officer, who made the seizure u/s 67 of the Excise Act, reported the seizure to the Collector as required u/s 76 of the Act, and the Collector has made an appropriate order in respect of the car. Thus, in any view of the matter, Section 523 of the Code is not attracted to the facts of the instant case. Mrs. Nag, however, submits that, when Ansar Sardar failed to furnish bail bond, as directed by the Collector, he was produced before the Sub-divisional Magistrate, and in the forwarding report the fact of seizure was stated. She argues that this should be taken to be a report about the seizure by the Sub-Inspector to the Magistrate which brings it u/s 523 of the Code. Ansar Sardar was produced before the Magistrate for appropriate orders u/s 167 of the Code. Ipso facto that does not become a report about the seizure of the car u/s 523 of the Code. Moreover, on reference to the forwarding report we find that it was not even stated there that the car was, in fact, seized. Mrs. Nag then turns round and submits that, when the Excise Department raised objection to Parbati's petition for return of the car, the Magistrate was then informed that the car had been seized. But, then the Magistrate was also informed that the car was produced before the Collector and an appropriate order was made by the Collector about dispute (?) pending investigation. The report to a Magistrate contemplated u/s 523 of the Code is not a report in the sense of a bare statement of fact about the seizure or in the nature of just an information, but the report should and must mean a report about the seizure with a view to obtaining an order about the disposal of the article seized. We have said that physical production of the seized property is not necessary, but report to the Magistrate can have meaning only if the Magistrate's jurisdiction is sought for about disposal of the property. Here in this case under the provisions of the Excise Act appropriate order was already obtained about disposal of the seized car pending investigation, and so, the bare statement about the seizure of the car contained in this objection to Parbati's petition for return of the car does not make it a report about seizure with a view to obtain an order of the Magistrate

about disposal of the property. On the other hand, it was contended in that petition that, since the Collector has made an appropriate order, the Magistrate has no jurisdiction to make orders about disposal of the car. Thus, from whatever angle the facts of the present case are considered, there is no doubt that the fact do not come under the terms of Section 523 of the Code and, as such, the Sub-divisional Magistrate, Alipore, had no jurisdiction to make an order for return of the car. This view appears to be not only reasonable but consistent with the other provisions of the Excise Act. u/s 65(l)(b) of the Act, the Collector has the power to release the seized property on payment of any sum not exceeding the value thereof as estimated by the Collector. If the Collector loses session of the property, difficulties may arise in his way in taking action under this Section 65(l)(b) of the Act. It will, therefore, be reasonable to conclude that unless the Excise people report the seizure to the Magistrate with a view to obtain an order about disposal of the same during investigation, the Magistrate has no jurisdiction u/s 523 of the Code to make an order about such disposal. We think, therefore, that the instant order made by the learned Magistrate on October 30, 1969, should be set aside.

4. In the result, the Rule is made absolute. The order of the learned Magistrate directing return of the car to Parbati Naskar is set aside and Parbati Naskar is directed to return back the car to the person or authority from whom he took actual delivery of the car.

Sarma Sarker, J.

5. I agree.