
(1986) 08 RAJ CK 0042

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 343 of 1985

Mag Das and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-08-1986

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451
Penal Code, 1860 (IPC) — Section 379, 427, 447

Citation : (1986) RLW 565 : (1986) 2 WLN 586

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Milap Chand Jain, J.—This petition is directed against the order of the learned Munsif and Judicial Magistrate, Sardar Shahar dated 19-10-1985 passed in Criminal Case No. 288 of 1985 under Sections 447, 427 and 379, IPC, whereby the learned Magistrate directed that the seized Khasra Nos. 162, 168 and 169 be delivered to the complainant Shivratan.

2. The petitioners were prosecuted on the report of Shiv Ratan lodged on 17-6-1985 at the Police Station, Sardar Shahar for the offences under Sections 447, 427 and 379, IPC. During investigation, these three Khasras Nos. 162, 168 and 169 were taken possession of by the police and a memo was prepared to that effect. After presentation of the charge-sheet, on 4-10-1985 applications were presented by both the parties for delivery of possession of the three Khasras during the pendency of the trial. The learned Magistrate, after hearing both the parties, passed the impugned order. From the side of the complainant, several documents were placed on record, which were the part of the papers submitted by the police along with the charge-sheet. It appears that there were revenue litigation in respect of the land in question with the predecessor of the members of the accused-party. The complainant is the successor of Arjunram and Magdas and Arjunram are the sons of Radhakishan. The suit was filed by

Shri Arjun Ram, which was ultimately decreed and the decree was maintained by the Board of Revenue. Under the orders of the sub-Divisional Officer in execution, warrant for delivery of possession dated 8-5-1985 was issued and that warrant was executed on 23-5-1985. According to the prosecution, trespass was again committed on 12-6-1986 and the report was lodged by Shivratan on 17-6-1985 and submitted the charge-sheet on 4-10-1985, While considering the applications of both the parties, the learned Magistrate found it just and proper to deliver the custody of the land in question to the complainant Shiv Ratan pending conclusion of the trial. It also appears that the land was ordered to be put into custody of the complainant on furnishing "Supuradgi-nama" and Jamanatnama. The facts and circumstances of the present case are so obvious that they clearly go to establish that the order passed by the learned Magistrate is not only legal but just and proper. The possession was obtained by the complainant in execution of the decree on 23-5-1985 and according to the complainant, trespass was committed thereafter. The documents submitted along with the charge-sheet showing the delivery of the possession to the complainant, are of great significance and viewed in the light of those documents, it was proper for the learned Magistrate to have ordered for proper custody of land in question till the conclusion of the trial by the delivery of the custody of the land to the complainant.

3. Mr. M.M. Singhvi, learned counsel for the petitioners submitted that a fresh revenue suit was instituted and interim order has been passed in that suit. I need not go into this question as the necessary material was not placed either before the learned Magistrate or before the Court of Sessions and what this Court is required to consider it as to whether the learned Magistrate was right and justified in passing the impugned order on the basis of the material on record. I find full justification in passing of the impugned order in the back-ground of the case and particularly, the documents produced along with charge-sheet showing delivery of the possession to the complainant in execution of the decree. It may be stated that u/s 451 Cr. PC. the interim order was passed for the proper custody of the land in question till the conclusion of the trial. It is for the Court to manage the property during (his period, that is why, the properties are released on execution of "Supuradginama" and "Jamanatnama". In the impugned order dated 19-10-1985 no such conditions find mention regarding the submission of the "Supurdginama" and "Surety bonds." The learned counsel for the complainant produced before me a certified copy of the communication dated 19-10-85, to the Station House Officer, which shows that the learned Magistrate had passed the order for submission of "Supurdginama" and "surety bound" by the complainant and communication records that these documents have been verified. It further records that in view of the verification, the land be delivered to Shiv Ratan against receipt. Mr. Singhvi, submitted that the learned Magistrate has not passed any order regarding the rendition of accounts etc. When the property is in the Custody of the court and only an arrangement has been made for proper custody of the land in question till the conclusion of the trial and when

the custody shall be treated on behalf of the court, the person to whom the property is given is under an obligation to render the account. If he cultivates the land, it will be on behalf of the court. In this connection, suffice it to say that the petitioners if so advised may approach the Magistrate. So far as the impugned order is concerned, in my opinion, the same calls for no interference and the petition deserves to be dismissed.

4. Accordingly, this petition fails, so, it is hereby dismissed.