
(1978) 02 BOM CK 0018
In the Bombay High Court

Om Rajnarain Shivpuri

APPELLANT

Vs

R.M. Patil and Another

RESPONDENT

Date of Decision : 14-02-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 34, 420, 451

Citation : (1978) CriLJ 1432

Hon'ble Judges : Sapre, J;Apte, J

Bench : Division Bench

Judgement

Sapre, J.—By this petition under Article 226 of the Constitution of India, the petitioner seeks to challenge the order dated 2nd Nov. 1977 passed by the Metropolitan Magistrate, 26th Court, Borivli, Bombay, u/s 451 of the Cr. P.C. 1973 in Criminal Case No. 655/W of 1977.

2. Criminal Case No. 655/W of 1977 arises out of a complaint filed by respondent No. 2 Roshanlal Anand against four persons, including the petitioner Om Rajnarain Shivpuri who is shown as accused No. 3 in the said complaint. That is a complaint u/s 420 read with Section 34 of the I.P.C. The allegations in the complaint are these. On 4th Jan., 1977 accused No. 2 Rajesh Saksena entered into an agreement of sale with the complainant Roshanlal Anand and sold to him his car Fiat Premier President bearing registration No. DHC-6239 on receiving payment of Rs. 20,500/-. Accused No. 2 Rajesh Saksena handed over to the complainant the certificate of registration along with sale letter and receipt, but he agreed to give delivery of the car to the complainant, after transferring ownership by applying to the R. T. O., Delhi. However, accused No. 2 dishonestly handed over possession of the car to accused No. 3, the petitioner herein, purporting to have sold the car to him on 15th Dec., 1976 for Rs. 25,000/-. He was also trying to transfer the car in the name of accused No. 3 after bringing into existence forged documents,

3. The complainant-respondent No. 2 filed an application u/s 94 of the Cr. P.C. for issue of a search warrant against the petitioner-accused No. 3 for the seizure of

the car in question. The learned Magistrate issued the search warrant and, in execution thereof, the police at Bandra seized the said car on 1st Oct. 1977 under a panchnama from accused No. 3 at Bombay. The car was produced before the learned Magistrate and it was with Bandra police for safe custody.

4. After the seizure of the car, the complainant, accused No. 2 and accused No. 3 each filed an application for getting custody of the car u/s 451 of the Cr. P.C. After going through the material placed before him and hearing the parties, the learned Magistrate came to the conclusion that the complainant was best entitled to get the custody of the seized car as against accused Nos. 2 and 3. He, prima facie, held the sale of the car by accused No. 2 to the complainant on 4th Jan. 1977 for Rs. 20,500/- to be the real transaction and held that the sale of 15th Dec. 1976 of the car purported to have been made by accused No. 2 in favour of accused No. 3 for Rs. 25,000/- was a fake sale on the strength of documents subsequently brought into existence. The learned Magistrate accordingly passed an order directing delivery of the car to the complainant Roshanlal Anand for safe custody u/s 451 of the Cr. P.C. till the decision of Criminal Case No. 655/W of 1977 or until accused No. 2 or accused No. 3 obtained an order from a competent Civil Court or any other higher Court to get the custody of the car. However, the learned Magistrate directed the complainant to execute a P.R. Bond of Rs. 25,000/- on the usual terms and conditions before the custody of the car was given to him. It is this order that is being challenged in this application,

5. The first submission on behalf of the petitioner is that the search warrant issued by the learned trial Magistrate u/s 94 of the Cr. P.C. was without jurisdiction. Section 94 permits a Magistrate to issue a warrant to enter upon any place and to search the same and to take possession of any property found therein, if he has reason to believe, inter alia, that the place is used for the deposit or sale of stolen property. In the instant case the car in question was not stolen property. It is not the case of the complainant that he was in possession of the car and it was taken away from his possession. On the other hand, his allegation in the complaint is that possession of the car has yet to be delivered to him. As the car was not stolen property, the learned Magistrate was not competent to issue search warrant u/s 94 of the Code.

6. However, in the present petition, what is challenged is the order for custody of the car made by the learned Magistrate u/s 451 of the Code and the order issuing the search warrant itself has not been challenged. We, therefore, refuse to go into the question whether it was permissible for the learned Magistrate to issue the search warrant u/s 94 of the Code.

7. The next submission is that the order made by the learned Magistrate was in excess of the jurisdiction conferred on him u/s 451 of the Code. The offence alleged in the complaint is of cheating punishable u/s 420 of the I.P.C. The property regarding which the offence of cheating is alleged to have been committed is the money, namely, the amount of Rs. 20,500/- and it is not the car nor is it an allegation of the complainant that the car had been used for the

commission of the offence alleged. That being so, the learned Magistrate was not empowered to pass an order u/s 451 of the Code for the custody of the car pending the trial.

8. This argument is without any force. Section 451 of the Cr. P.C. 1973 reads thus:

When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

The section is followed by the following explanation:

For the purposes of this section, "property" includes-

- (a) property of any kind or document which is produced before the Court or which is in its custody,
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

The section empowers the Court to pass an order for custody and disposal of property pending trial in respect of both (1) property produced before the Court during trial and (2) property regarding which the offence appears to have been committed or which appears to have been used for commission of the offence. It is thus not only in respect of the property regarding which an offence appears to have been committed or which appears to have been used for the commission of the offence that the Court is empowered u/s 451 to make an order for custody and disposal of property pending trial, but even in respect of property produced before the Court, the Court is empowered to make such an order. It is not disputed that the car in question was produced before the Court and, therefore, the Court was within its jurisdiction to pass an order for the custody and disposal of the car pending trial.

9. It was next submitted that the Court was not in a position to pass even a final order u/s 452 of the Code giving custody of the car to the complainant and, therefore, if a final order of the above-mentioned kind could not be passed, it is clear that even an interlocutory order u/s 451 could not be passed. It was submitted that the complaint was in respect of the offence of cheating and the subject-matter of cheating was the amount which the complainant had parted with. Even if, therefore, the complainant succeeds in proving the offence against the accused or any of them, no order could be passed directing delivery of the car to the complainant. We are unable to see why it would not be permissible for the Court, acting u/s 452, to pass such an order if the complainant succeeds in establishing his case and is able to bring home the offence of cheating against the accused or any of them,

10. The next submission is that the learned Magistrate had, in fact, passed a final order which he was not competent to do. This submission is without any substance because the operative part of the order of the learned Magistrate itself shows that the car has been delivered to the complainant for safe custody till the decision of Criminal Case No. 655/W of 1977 or until accused No. 2 or accused No. 3 obtains an order from a competent civil Court or any other higher Court to get the custody of the car.

11. The last submission made is that the learned Magistrate had not properly exercised the discretion and had not properly appreciated the evidence and circumstances on record in directing delivery of the car to the complainant instead of to accused No. 3. But this was a matter falling exclusively within the jurisdiction of the learned trial Magistrate and this Court under its extraordinary jurisdiction under Article 226 of the Constitution could not sit in judgment over the order passed by the learned trial Magistrate by going into the material on record and finding for itself what order about the custody of the car ought to be made.

12. In the result, the application is dismissed and the Rule is discharged.