
(1988) 03 RAJ CK 0024

In the Rajasthan High Court

Case No : Criminal Miscellaneous Application No. 217 of 1981

Poona Ram

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 10-03-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1988) 1 RLW 717 : (1988) 2 WLN 168

Hon'ble Judges : Navin Chandra Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Navin Chandra Sharma, J.—This is a petition by Poona Ram u/s 482 Cr. P.C. for quashing the order of the Sessions Judge, Pali dated January 23, 1981 and that of the Chief Judicial Magistrate, Pali dated April, 30, 1979 and for directing the payment of the cost price of the wheat or to deliver the same to the petitioner without recovering any rent or warehouse charges from the petitioner.

2. Facts leading to the filing of the petition are that on July 20, 1974, the Enforcement Inspector, Sumerpur filed a criminal complaint in Court of the Chief Judicial Magistrate, Pali against Vanechand and Poona Ram with respect to the offence u/s 3(d) read with Section 7 of the Essential Commodities Act for contravention of the provisions contained in Clause 15(2) of the Rajasthan Wheat (Regulation of Trade) Order, 1973. It was alleged in the criminal complaint, that Shri Radheyshyam, Enforcement Inspector, Sumerpur on July 11, 1974 went to village Bakli and made a search of the Nohra of Vanechand where he found 105 bags of wheat and 1 bag of "Rai". As they were stored in violation of Clause 5(2) of the Rajasthan Wheat (Regulation of Trade) Order, 1973, they were seized under a seizure memo. One bag containing "Rai" was, however, returned. It was stated that Vanechand had no right to keep in his possession more than 20 quintals wheat without licence Vanechand however, represented that the wheat

belonged to Poona Ram, petitioner. It was prayed that Vanechand and Poona Ram, petitioner be convicted and sentenced for the aforesaid offence.

3. It may be mentioned that it was mentioned in the criminal complaint that 105 bags containing wheat, which were seized, entrusted to the godown of Sumerpur Warehouse under receipt No. RSW 110169 dated July 17 1974. A weight check memo of the wheat bags was also obtained from the authorities of Warehouse Godown, Sumerpur.

4. On April 7, 1975, an application was filed before the Chief Judicial Magistrate Pali on behalf of Poona Ram, petitioner that no offence had been committed and that the wheat seized may be delivered to him after obtaining a security bond. This application was decided by the Chief Judicial Magistrate Pali on April 16, 1975. The Chief Judicial Magistrate held that there were reason able grounds to believe that Vanechand and Poona Ram were concerned with the contravention of the Rajasthan Wheat (Regulation of Trade) Order, 1973. It was stated that wheat was a perishable commodity and it was lying in the Warehouse of Sumerpur. He, therefore, ordered that the wheat may be auctioned in the open market and its price be deposited in the Court which shall be subject to the final decision of the Court. Application of Poona Ram for handing over to him the wheat bags seized was rejected. On April 28, 1975, a letter was sent to Choonaram of Sumerpur for producing the wheat bugs in Court.

5. It appears that on September 1, 1977, the Assistant Public Prosecutor made an application to the Chief Judicial Magistrate, Pali to withdraw the criminal complaint filed against Vanechand and the petitioner. A similar request was again made by the Assistant Public Prosecutor on April 19, 1978. It was on April 30, 1979 that the Chief Judicial Magistrate, Pali decided the application of the Assistant Public Prosecutor for withdrawing the criminal complaint. He granted permission to the Assistant Public Prosecutor to withdraw the complaint and accordingly acquitted Vanechand and the petitioner.

6. As regards 105 bags of wheat which had been seized and kept in custody of Sumerpur Warehouse, the Chief Judicial Magistrate found that an amount of Rs. 2400/- in respect of rent was due to the Warehouse. He ordered for the return, of 105 bags of wheat to Poona Ram on the condition that Poona Ram will pay the amount of Rs. 2400/- or whatever amount may be due on account of rent to the Rajasthan Warehouse Corporation, Sumerpur Branch. It is against this order that Poona Ram has filed the present petition.

7. On July 14, 1987 when this petition was listed for hearing, the petitioner or his counsel was not present. However, Mr. S.K.. Mathur, Public Prosecutor was present. He was heard.

8. The petitioner has stated in his petition that he was not aggrieved with the order of the Chief Judicial Magistrate whereby he had ordered for the auction of the wheat seized in the open market. It has been pleaded that after the seizure of the wheat, the petitioner was not responsible at all under the law for payment

of rent as the wheat was not in his possession. It was mandatory for the concerned authorities to produce the wheat bags in Court for public auction and the wheat should have been auctioned immediately and sale price should have been deposited in the Court. The petitioner cannot be made liable for disobedience of the orders of the Court or for non-auction of the wheat by the Court.

9. I find substance in the application filed by the petitioner Poona Ram. It is clear by the order of the Chief Judicial Magistrate, Pali dated April 16, 1975 that Poona Ram's application for entrusting the wheat bags to him was rejected and the Chief Judicial Magistrate had ordered that the wheat should be sold in open market. The Assistant Public Prosecutor had also made a request for auction of the wheat on February 23, 1978. It is surprising that the Chief Judicial Magistrate took no steps to get the wheat auctioned in compliance with his order dated April 16, 1975 and to deposit the sale proceeds in Court. It was only when the Assistant Public Prosecutor had made application for withdrawal of the complaint that the Chief Judicial Magistrate, while allowing withdrawal of the complaint, passed order for handing over the wheat to the petitioner on his paying rent dues of the Warehouse. This order was passed after four years of the earlier order dated April 16, 1975. It was incumbent on the Chief Judicial Magistrate to get the wheat contained in 105 bags sold by public auction in April, 1975 itself and to deposit the sale proceeds in court. The petitioner cannot be blamed if despite the orders of the Chief Judicial Magistrate, Pali dated 16th April, 1975, compliance of that order was not made. The wheat bags were seized on July 11, 1974 and it is quite natural that the wheat-corns must have practically decayed and become waste after about four years and nine months when the Chief Judicial Magistrate passed the impugned order. The petitioner is clearly entitled to get payment of the cost price of the wheat prevalent on the date when the same were seized. In the weight check memo, the total net weight of 105 bags wheat is mentioned as 107 quintal, 20 Kgs. and 800 grams. In the seizure receipt, the market price of the wheat at the time of depositing the same with the Warehouse is mentioned as Rs. 105/-per quintal and total value of the wheat is mentioned as Rs. 11257/- The petitioner is clearly entitled to get Rs. 11257/- from the State Government, without paying any rent charges to the Warehousing Corporation

10. I may refer in this connection to the decision of their Lordships of the Supreme Court in B. K. Patil v. State of Mysore, 1977 CriLJ 1141 What happened in that case was that in connection with the theft which took place in the house of the complaint, the stolen articles were recovered from the house of the accused persons. The articles were produced before the Chief Judicial Magistrate who directed the police officer to retain the articles in his custody until the same were verified and their value was determined by a goldsmith. The articles were kept by the Sub-Inspector, Haveri in the guard room of the police station in a trunk. Later on in January 1961 the Court directed the Sub-Inspector to produce the articles. The sub-Inspector opened the trunk and found that they contained

only stones and all the ornaments had disappeared. Five accused persons were convicted by the trial Magistrate and their appeal also rejected by the Sessions Judge. However in revision they were acquitted by the High Court on technical grounds. After conclusion of the trial, the complainant filed an application before the trial Magistrate for return of Criminal Procedure, 1898 had not been placed in the Court and the provisions of the Code appeal by special leave before the Supreme Court. His Lordship Fazal Ali, J. stated that the object and scheme of the various provisions of the Code of Criminal Procedure appear to be that where the property, which has been the subject matter of an offence, is seized by the police it ought not to be retained in the custody of the Court or of the police for anytime longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It was observed that the High Court and the Sessions Judge proceeded on the footing that the articles concerned must be produced before the court or should be in its custody. For this, it was stated that the object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, the Court exercises an over all control on the actions of the police officers in every case where it has taken cognizance. It was observed that the articles were produced before the Court but were retained by the Sub-Inspector under the directions of the Court. The production before the Court does not mean physical custody or possession by the Court, but includes even control exercised by the Court by passing an order regarding the custody of the articles. When once the Magistrate, after having been informed that the articles were produced before the Court, directed the Sub-Inspector to keep them in a safe custody and get valued by a goldsmith, they were undoubtedly produced before the Court and became custodia legis. Where the property is stolen, lost or destroyed and there is no prima facie defence made out that the State or its officers had taken due care and caution to protect the property, the Magistrate may, in an appropriate case, where the ends of justice so required, order payment of the value of the property. It was held that the State cannot be allowed to successfully resist the application filed by the appellant in that case. The Supreme Court allowed the appeal of the complainant and the State of Mysore was directed to pay a sum of Rs. 10,000/- to the complainant.

11. The ratio of above decision of the Supreme Court clearly applied to the facts and circumstances of this case. The Enforcement Inspector had seized 105 bags of wheat. He had handed over these 105 bags of wheat to the Warehousing Corporation in its warehouse at Sumerpur on July 17, 1974. The Chief Judicial Magistrate was duly informed of this fact. As early as on April 16, 1975, the Chief Judicial Magistrate had directed to auction the wheat in open market and for depositing of its price in Court. No compliance of this direction was ever made.

The wheat, which was seized by the police and entrusted by it to the Warehouse Corporation, has completely decayed, wasted and damaged and the petitioner is entitled to get back the price of the wheat seized without payment of any entrustment charges.

12. I, therefore, allow this petition filed by Poona Ram, set aside the order of the Sessions Judge, Pali dated January 23, 1981 and that of the Chief Judicial Magistrate, Pali dated April 30, 1979 and the State of Rajasthan is directed to pay sum of Rs. 11257/- to the petitioner Poona Ram. In the circumstances of the case the petitioner will bear his own costs of this petition.