

(1997) 04 RAJ CK 0037

In the Rajasthan High Court

Case No : Criminal Miscellaneous 482 Petition No. 656 of 1995

Rajasthan Financial Corporation

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 26-04-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451, 482

Penal Code, 1860 (IPC) — Section 341, 379

State Financial Corporations Act, 1951 — Section 29

Citation : (1997) 2 RLW 889 : (1997) 1 WLN 610

Hon'ble Judges : Amaresh Kumar Singh, J

Bench : Single Bench

Judgement

Amaresh Ku. Singh, J.—Heard the learned Counsel for the petitioner and the learned Public Prosecutor.

2. This petition is directed against the order dated 25th July, 1995 passed by the learned Civil Judge (Junior Division) cum Judicial Magistrate First Class, Kherwara by which order the learned Judicial Magistrate dismissed the application of the petitioner filed u/s 451 of the Criminal Procedure Code for giving the truck in the superdgi of the petitioner.

3. The facts of the case so far as they are relevant for the disposal of this petition may be summarised as below: The Rajasthan Financial Corporation advanced loan to one Dharma for purchase of truck. Dharma utilised the loan for the purpose of purchasing the truck No. RJJ 2951. During the period when some installments of the balance of loan remained unpaid Dharma transferred the truck to one Mahesh Chandra. After sometime Dharma removed the truck from the possession of Mahesh Chandra and in consequence Mahesh Chandra filed a first information report against Dharma alleging the commission of offences punishable u/s 379 and 341 of the Indian Penal Code. The Police registered a case on the basis of the first information report lodged by Mahesh Chandra and during investigation seized the truck No. RJJ 2951. Mahesh Chandra applied to

the Court of learned Judicial Magistrate for giving the truck in his superdgi and the learned Judicial Magistrate accepted the application filed by Mahesh Chandra and gave the truck in the superdgi of Mahesh Chandra subject to the condition that he would continue to pay the balance of the installments to the Rajasthan Financial Corporation in accordance with the order. Mahesh Chandra, however, did not comply with the condition and in consequence the amount which was payable to the Rajasthan Financial Corporation could not be paid. The petitioner (Rajasthan Financial Corporation) thereafter took the truck in their custody purporting to act u/s 29 of the State Financial Corporations Act, After taking the truck in their custody the petitioner applied to the learned Judicial Magistrate for selling the truck. The learned Judicial Magistrate rejected the application filed by the petitioner vide order dated 25th July, 1995 on the ground that the petitioner was not a registered owner of the truck in question. Feeling aggrieved by the aforesaid order the petitioner has filed this petition u/s 482 of the Criminal Procedure Code.

4. Without deciding the question whether the Rajasthan Financial Corporation was legally empowered to take the truck in their custody for non-payment of balance of loan and interest, it may be said without any hesitation that one any movable property has been seized by the Police Officer in exercise of the powers conferred on Police officer by the Criminal Procedure Code and the Criminal Court has passed order under the Criminal Procedure Code for proper custody of that property, even the real owner of the property does not have any right to remove that property from the custody of the Court. If any person (including) the real owner feels aggrieved by the order of the Court the proper remedy is to approach the Court and apply for passing an order for the purpose of obtaining the property seized by the Police. In this view of the matter the Rajasthan Financial Corporation was not empowered to take the truck in their custody when the truck was in the custody of Mahesh Chandra under the orders of the Court. The petition filed by the Rajasthan Financial Corporation could have been dismissed on the ground alone without entering into the question whether the Rajasthan Financial Corporation was or was not a registered owner of the truck.

5. It has come on record that Dharma is not traceable as he is an accused and warrant have been issued against him. Mahesh Chandra to whom the custody of the truck was given by the Judicial Magistrate has not complied with the term subject to the condition on which the truck was given to him. In these circumstances it was necessary for the learned Judicial Magistrate to have taken steps for the recovery as well as safe custody of the truck. It may be noted here that whenever any property is seized by the Police and the seizure is reported to the Magistrate and the Magistrate passes an order for the safe custody of such property, the responsibility of the Magistrate in respect of that property does not come to an end till the final orders are passed for the disposal of that property in accordance with law. The learned Judicial Magistrate has failed to pass suitable order for the safety of the truck No. RJJ 2951.

6. For reasons mentioned above the order dated 25th July, 1995 passed by the learned Civil Judge (Junior Division) cum Judicial Magistrate First Class, Kherwara deserves to be set aside and quashed and is hereby quashed. The petitioner Rajasthan Financial Corporation is hereby directed to produce the truck No. RJJ 2951 before the learned Civil Judge (Junior Division) cum Judicial Magistrate First Class, Kherwara within a period of 20 days from the passing of this order and in case if the truck cannot be removed from the place at which it is lying to submit a report before the learned Civil Judge (Junior Division) cum Judicial Magistrate First Class Kherwara and with the submission of this report the truck shall be deemed to have passed into the custody of the Court. It would be open to the petitioner Rajasthan Financial Corporation to move an application before the Civil Judge (Junior Division) cum Judicial Magistrate First Class, Kherwara for passing fresh orders for the safe custody of the truck and the learned Judicial Magistrate is expected to pass suitable orders in accordance with law for the safe custody of the truck. The learned Counsel for the petitioner has further submitted that since some amount is still out standing against Dharma, the petitioner would be desirous to dispose of the truck for the purpose of his amount. The petitioner may move an application in this regard before the learned Judicial Magistrate and the same shall be disposed of in accordance with law.

7. With the above observations the petition is partly allowed. The order dated 25th July, 1995 passed by the learned Civil Judge (Junior Division) cum Judicial Magistrate First Class, Kherwara is hereby set aside and quashed. A copy of the order be sent to the learned Civil Judge (Junior Division) cum Judicial Magistrate First Class, Kherwara for necessary action.