

(2009) 06 AHC CK 0082

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 14501 of 2009

Ram Bali Rajbhar

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 25-06-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 125, 482

Citation : (2009) 06 AHC CK 0082

Hon'ble Judges : V.K.Verma, J

Final Decision : Allowed

Judgement

Vijay Kumar Verma, J.—Heard Sri S.K. Mishra Advocate appearing for the applicant and learned AGA for the State.

2. By means of this application under section 482 of the Code of Criminal Procedure (in short "the Cr.P.C."), order dated 14.5.2009 passed by Additional Sessions Judge, Court No. 6. Azamgarh in Criminal Revision No. 102 of 2009 (Rambali Rajbhar v. State of U.P.) has been challenged. By the impugned order, the revision has been dismissed.

3. From the record, it transpires that Family Court Azamgarh passed an order on 2.3.2009, in execution case No 180 of 2006 (Smt. Nisha v. Virendra @ Rajendra), under section 128 Cr.P.C., to make recovery of Rs. 33,000/ from O.P. Virendra @ Rajendra. It appears that application under section 125 Cr.P.C. was moved by Smt. Nisha against her husband Virendra @ Rajendra and in execution of the order passed in that case order dated 2.3.2009 was passed by Family Court Azamgarh to recover the said amount of maintenance. In compliance of that order, tractor No. U.P. 50L/6080 has been attached by S.O. P.S. concerned. Against the attachment of tractor, an application for release was moved by the applicant and his father Moti Rajbhar in the Court of Judicial Magistrate Court No. 27 Azamgarh on 28.3.2009. The Magistrate concerned rejected the application vide order 02.04.2009 holding that the Court has no jurisdiction in the matter, as the tractor No. U.P.50L/6080 as per report of police station concerned has been

attached in compliance of the order passed by Family Court Azamgarh. Prior to that, an application for release of tractor was moved in Family Court Azamgarh on 7.3.2009, which was rejected on that very day by the Principal Judge Family Court Azamgarh holding that the Family Court Azamgarh has no role in the matter. The applicant and his father did not avail any remedy against the order dated 7.3.2009 passed by Family Court, but against the order dated 2.4.2009 passed by the Magistrate, Criminal Revision No. 102 of 2009 was preferred, which has been dismissed vide impugned order, against which application under section 482 Cr.P.C. has been moved in present proceeding.

4. The main" submission made by learned Counsel is that the applicant and his father Moti Rajbhar are joint registered owner of tractor No. U.P. 50L/6080, which has been attached in compliance of the order dated 2.3.2009 passed by Family Court Azamgarh in execution case No. 180 of 2006 and since the applicant and his father have no concern with that case, hence the tractor is liable to be released in their favour. To show their ownership of tractor, the applicant has filed copy of Certificate of Registration (Annexure1). It is also submitted by learned Counsel for the applicant that Virendra @ Rajendra is the grandson of Moti Rajbhar, but property of the applicant and Moti Rajbhar cannot be attached in compliance of the order dated 2.3.2009 passed in execution case No. 180 of 2008, Smt. Nisha v. Virendra @ Rajendra, as the order of granting maintenance allowance under section 125 Cr.P.C. was passed against Virendra @ Rajendra and hence the maintenance allowance can be recovered from his property alone and property of other persons cannot be attached for making recovery of maintenance allowance. The contention of the learned Counsel is that only Virendra @ Rajendra is liable to pay maintenance to his wife Smt. Nisha in compliance of the order passed in the proceeding under section 125 Cr.P.C. by Family Court Azamgarh, and hence, for making recovery of maintenance allowance, the tractor aforesaid could not be attached, as Virendra @ Rajendra has no concern with that tractor, which is the joint property of applicant Ram Bali Rajbhar and his father Moti Rajbhar.

5. It is also submitted by learned Counsel for the applicant that attachment of the tractor was made in compliance of the order passed by Family Court Azamgarh on 2.3.2009 in execution case No. 180 of 2006 and hence the Family Court Azamgarh was bound to dispose of release application on merit, but due to lack of adequate legal knowledge on the part of Principal Judge Family Court Azamgarh, the application for release has been rejected by passing wholly illegal order on 7.3.2009 saying that Family Court has no role in the matter.

6. Although, the application under section 482 Cr.P.C. has been moved against the order dated 14.5.2009 passed by Additional Sessions Judge in Criminal Revision No. 102 of 2009 and order dated 7.3.2009 passed by Family Court Azamgarh in execution case No. 180 of 2006 has not been challenged by the applicant in this proceeding, but this Court in its inherent jurisdiction under section 482 Cr.P.C. can look into the validity of order dated 7.3.2009 passed by

Family Court Azamgarh.

7. It is not disputed that tractor No. U.P. 50L/6080 has been attached in compliance of the order dated 2.3.2009 passed by Family Court Azamgarh in execution case No. 180 of 2006 Smt. Nisha v. Virendra @ Rajendra. Although, the applicant Rambali Rajbhar and his father Moti Rajbhar were not party in the proceeding under sections 125 and 128 Cr.P.C. in Family Court Azamgarh, but since their tractor has been attached by the police in execution of the order passed against Virendra @ Rajendra in the proceeding under section 125 Cr.P.C, hence the applicant Rambali Rajbhar and his father were aggrieved person and they were entitled to move application in Family Court Azamgarh to get their tractor released. Therefore, the release application was legally maintainable in Family Court Azamgarh and that Court was bound to dispose of release application on merit. I entirely agree with the contention of learned Counsel for the applicant that for want of adequate legal knowledge on the part of Principal Judge, Family Court Azamgarh, wholly illegal order was passed by him on 7.3.2009 in execution case No. 180 of 2006, Nisha v. Virendra @ Rajendra, under section 128 Cr.P.C., whereby the application for release of tractor has been rejected. The following cryptic order was passed by Sri Subhash Chandra, the then Principal Judge, Family Court Azamgarh, on 07.03.2009 in execution case No. 180 of 2006:

8. It is really very unfortunate that senior Additional ""District & Sessions Judge, who is holding the post of Principal Judge Family Court, has passed wholly illegal order on release application. The applicant and his father had initiated quite legal proceeding in Family Court Azamgarh to get their tractor released. Since the tractor was attached by the police in compliance of the order dated 2.3.2009 passed by Family Court Azamgarh, in execution case No. 180 of 2006, hence only that Court could pass appropriate order on the application, which was moved by the applicant and his father for release of their tractor. The Magistrate concerned had rightly rejected the application for release of tractor, as the said tractor was attached by the police in compliance of order passed by Family Court Azamgarh. The Magistrate could not release the tractor from attachment, as it was not attached in connection with any offence, or in pursuance of any order passed by Magistrate. Hence, there is no illegality in the" order dated 02.04.2009 passed by the Magistrate concerned and order dated 14.05.2009 passed by the Additional Sessions Judge in Criminal Revision No. 102 of 2009 also does not suffer from illegality, but the order dated 7.3.2009 passed by Family Court Azamgarh, being arbitrary and wholly illegal, may be quashed by this Court in its inherent jurisdiction under section 482 Cr.P.C. notwithstanding that the applicant has not sought any relief against that order in this proceeding.

9. Consequently, but with a view to do real and substantial justice, the order dated 7.3.2009 passed by Family Court, Azamgarh in execution case No. 180 of 2009 Nisha v. Virendra @ Rajendra, under section 128 Cr.P.C, is hereby quashed.

The Family Court Azamgarh is directed to dispose of the application dated

07.03.2009 for release of tractor. No. U.P.50L/6080 on merit within a period of 15 days on filing certified copy of this order.

With aforesaid direction, the application under section 482 Cr. P.C. is finally disposed of.