
(2000) 03 P&H CK 0068
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 1217 of 1987

Ramji Lal

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 08-03-2000

Acts Referred:

Citation : (2000) 3 RCR(Criminal) 769

Hon'ble Judges : M.L.Singhal, J

Advocate : Mr. Jaswant Jain, Advocate. Mr. S.K. Hooda, AAG, Haryana and Mr. S.D. Bansal, Advocate., Advocates for appearing Parties

Judgement

M.L. Singhal, J.

1. Ramji Lal was the Secretary of Hissar Ashoka Agricultural Implements Society, Hissar. Theft of certain machinery including one lathe, one birma (borer) and one welding set belonging to the Society took place. Case FIR No. 128 dated 19.3.1987 was registered at Police Station, City Hissar under Section 408 IPC, against Hira Lal and Har Narain. On the recovery of lathe, one birma and one welding set from the possession of Har Narain, he made an application for their being made over to him on superdari to the Court of Chief Judicial Magistrate, Hissar on 11.8.1987. Police reported that the property had been made over to Ramji Lal on 6.5.1987 and further the police had no objection to the release of lathe, etc., on superdari in favour of Har Narain who was prima facie owner of lathe, etc., having purchased the same from Hira Lal on 2.2.86 vide receipt executed by Hira Lal. Chief Judicial Magistrate, Hissar passed an order for release of lathe, etc., on superdari on 12.8.1987 in favour of Har Narain who was prima facie owner of lathe etc., having purchased the same from Hira Lal on 2.2.1986 vide receipt executed by Hira Lal. JUDGMENT dated 12.8.1987 was, however, reviewed and the Chief Judicial Magistrate passed an order on 24.8.87 by which he dismissed the application for the release of lathe etc. to Har Narain on superdari and ordered the return of lathe etc. to Ramji Lal.

2. Har Narain assailed the order passed by CJM, Hissar dated 24.8.87 before the

court of Session. Learned Sessions Judge, Hissar accepted the revision vide order dated 2.12.87 and set aside the order dated 24.8.87 passed by Chief Judicial Magistrate, Hissar ordering the return of lathe etc. to Ramji Lal. Learned Sessions Judge ordered that the Chief Judicial Magistrate, Hissar shall take steps to restore the property to Har Narain immediately.

3. Having felt that the learned Sessions Judge has not done justice by setting aside the order of Chief Judicial Magistrate dated 24.8.87 making over lathe etc. to Ramji Lal vide his order dated 2.12.87, Ramji Lal has come up in revision to this Court.

4. Learned counsel for the petitioner submitted that lathe etc. were the property of the Hissar Ashoka Agricultural Implements Society and Ramji Lal was its Secretary. With regard to this property, case FIR No. 128 dated 19.3.87 was registered at Police Station, City Hissar under Section 408 IPC. During investigation, lathe etc. were recovered from the possession of Har Narain. On 6.5.87 lathe etc. had been made over to Ramji Lal. On the application of Har Narain for lathe etc, being made over to him on superdari to CJM, Hissar, the police reported that lathe etc. had been made over to Ramji Lal on 6.5.87 but they had no objection to the release of lathe etc. to Har Narain, who was prima facie owner of lathe etc., having purchased the same from Ramji Lal on 2.2.86 vide receipt Ex.P1. CJM Hissar passed an order on 12.8.87 ordering the release of lathe etc. on superdari in favour of Har Narain. On Ramji Lal's prayer for review of the order dated 12.2.87, CJM, Hissar passed an order on 24.8.87 whereby he reviewed the order dated 12.8.87 and ordered the return of lathe etc. to Ramji Lal. Learned counsel for the petitioner submitted that order dated 24.8.87 passed by CJM, Hissar ordering that lathe etc, be returned to Ramji Lal did not call for any interference by the Sessions Judge, Hissar vide the impugned order as lathe etc. was the property of the Society. Case FIR No. 128 dated 19.3.87 was registered at Police Station City Hissar under Section 408 IPC against Ramji Lal and Har Narain and recovery of lathe etc. took place from the possession of Har Narain during the investigation of that case and if lathe etc. were returned to Har Narain in view of the impugned order of the Sessions Judge that would be restoring the property to the one against whom the accusation is that he came by this property from Hira Lal, who had come by this property by defiling the trust created by the Society in him.

5. Learned counsel for the petitioner further submitted that lathe etc. had been made over to Ramji Lal on 6.5.87 and while passing order dated 24.8.87, the CJM has observed that since the machine was no longer in the possession of the police, the police even could not comply with the order passed on 12.8.87 ordering the release of lathe etc. in favour of the Har Narain. He dismissed the application moved by Har Narain for the time being. He observed that an order for disposal of the property would be passed at the time of the final disposal of the case. Har Narain was at liberty to get himself declared as owner of this property through a decree of the civil court. Learned counsel for the petitioner

submitted that CJM, Hissar had thus protected the rights of Har Narain.

6. In this case, however, lathe etc. could not be made over to Ramji Lal on superdari because the case of Har Narain was that he purchased lathe etc. bona fide from Hira Lal on 2.2.86 for Rs. 10000/ vide receipt. During investigation, lathe etc. were recovered from the possession of Har Narain. Har Narain gave explanation as to how he came by this property viz that he purchased this property from Hira Lal on 2.2.86 for Rs. 10000/ and got receipt from Hira Lal. Learned Sessions Judge did not prima facie feel convinced about the authenticity of the FIR lodged by Ramji Lal with the police.

7. Learned counsel for respondent Har Narain, on the other hand, submitted that when lathe etc, had been recovered from the possession of Har Narain, who had purchased it from Hira Lal bona fide for a sum of Rs. 10000/ vide receipt, Har Narain was entitled to their release in his favour on superdari. In *Ram Parkash Sharma v. State of Haryana*, 1978 CLR 179, it was held that "the Court has the power to order restoration of the case property in favour of the person from whom it was seized but it did not mean that the Court must always release such property to the person from whom the property had been recovered especially when the accused of the case is in suspicion, investigation is not over and chargesheet has not been laid. The court has to be circumspect in such a situation before releasing the property. If the release of the property seized will, in any manner, affect or prejudice the course of justice at the time of the trial, it will be wise discretion to reject the claim for return of the property." In *Sardar Singh Kohli v. M/s. Swastik Financial Corporation (P) Ltd., New Delhi & Ors.*, 1964(2) CrL. L.J. 492, it was held that "possession of the article or property at the time the case started was alone to be considered before passing orders for its custody and question of its title was not relevant or proper for decision." In *Sat Singh v. State of Haryana & Ors.*, 1986 CrL. L.T. 165, it was held that "possession of the truck was given to the prospective vendee in pursuance of an agreement of sale from whom the bulk of the sale price had been received by the vendor although the registration of the truck had not been transferred in his name, it was held that in equity he was entitled to retain its possession." Learned counsel for respondent Har Narain submitted that in equity, he was entitled to the possession of lathe etc. when he had paid for it bona fide and if there was any dispute between Hira Lal and Society, that could be got adjudicated but pending such adjudication, Har Narain is entitled to the possession of lathe etc. It was submitted that police had also reported that they had no objection to the release of lathe etc. on superdari in favour of Har Narain, who was prima facie owner of lathe etc. It was submitted that Har Narain is a poor person. He should not be deprived of the use of lathe etc. as on operating lathe etc. his livelihood depends.

8. In *Balwinder Singh v. State of Punjab*, 1998(1) RCR(Criminal) 45 , tanker found to have been carrying colourless kerosene was ordered to be released on superdari to the owner. Among other considerations, this consideration also

weighed with the Court that nonrelease of the tanker on superdari to him would effect his livelihood.

9. Faced with this position, learned counsel for the petitioner submitted that Chief Judicial Magistrate, Hissar could not have reviewed the order dated 12.8.87 and if that was so, order dated 24.8.87 is nonexistent. Assuming that order dated 12.8.87 could not have been reviewed, the order dated 12.8.87 would come into play according to which lathe etc. are required to be handed over to Har Narain on superdari. In fact, the Court was dealing with a situation concerning the release of lathe etc. on superdari. Earlier lathe etc. had been made over to Ramji Lal on 6.5.87. On the application of Har Narain made to CJM, Hissar on 11.8.87, the police reported that they had no objection to the release of lathe etc. on superdari to Har Narain, who was prima facie owner thereof. Vide order dated 12.8.87, CJM, Hissar ordered that lathe etc. be made over to Har Narain on superdari. On the prayer of Ramji Lal, lathe etc. were ordered to remain with Ramji Lal. In this case, thus, there was no question of review of any order as such. Court was dealing with the question of handing over the temporary custody of lathe etc.

10. In my opinion, no exception can be taken to the order passed by learned Sessions Judge, Hissar dated 2.12.87, which is equitable, just and proper in the circumstances of the case. If lathe etc. have been ordered to be made over to Har Narain, it should not be understood to mean that if theft takes place in each case, stolen property should be handed over to the one, from whom it has been recovered. As to whom, case property should be handed over on superdari, that will depend upon the facts and circumstances of each case.

Revision dismissed.