
(1971) 03 GAU CK 0003
In the Gauhati High Court

R.K. Dolansana Singh and Others

APPELLANT

Vs

R.K. Narjitsana Singh and Others

RESPONDENT

Date of Decision : 06-03-1971

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 107, 439, 561A

Citation : (1971) CriLJ 1756

Hon'ble Judges : R.S. Bindra, J.C.

Bench : Single Bench

Judgement

R.S. Bindra, J.C.

1. In this revision petition filed by R.K. Dolansana and five others u/s 439 read with Section 561-A of the Criminal Procedure Code, the validity of the orders dated 8-1-1970 and 22-8-1970 respectively passed by the Sub-divisional Magistrate, Thoubal, and by the Additional Sessions Judge, Manipur, is assailed.

2. For proper appreciation of the legal points involved in the revision petition the facts leading up to it may be briefly set out. Respondents nos. 1 and 2, Narjitsana Singh and Manisana Singh, moved an application on 1-12-1969 before the Sub-divisional Magistrate, Thoubal, for drawing up a proceeding u/s 107 Cr.PC against the present petitioners Nos. 1 to 4 as disputes had arisen between the two parties over the crops harvested from certain lands belonging to deity Gopinath. The Magistrate forwarded that application to the Officer in Charge- of the Police Station, Thoubal, for enquiry and report. The Police submitted their report to the Magistrate on 2-12-1969 stating that the land in dispute belongs to deity Gopinath, that there had been seven Shebaites successively of that deity all of whom had died one after the other, that Th. Ningthemjao Singh and Th. Yaima Singh, the petitioners Nos. 5 and 6 herein, were the Loupanabas (Managers) of the paddy land owned by the deity, that respondents Nos. 1 and 2 are the descendants of deceased Shebaites Nos. 1 to 6 while petitioners Nos. 1 to 4 are the sons and brothers of the last Shebait Bhubonsana Singh, that petitioners Nos. 5 and 6 had been working as

Loupanabas respecting the land in dispute for the last 20 years, and that there was an immediate apprehension of the breach of the peace between the petitioners Nos. 1 to 4 on one hand and respondents Nos. 1 and 2 on the other respecting the produce of land lying with petitioners nos. 5 and 6.

It appears that police" had seized 340 pots of paddy from petitioners Nos, 5 and 6 during the course of enquiry and had entrusted the same to them on securing a bond in the sum of Rs. 5,000/-. On the basis of the Police report, the Magistrate ordered on 4-12-1989 drawing up of the proceedings against both the parties u/s 107 Cr.PC and simultaneously directed registration of a separate proceeding u/s 523 Cr.PC: respecting the paddy seized by the Police. The Magistrate subsequently ordered the Police to produce the seized paddy before him on 3-1-1970 and on the failure of the Police to comply with that direction he issued a search warrant on 5-1-1970 with the apparent object of seizing the paddy from the possession of the two Loupanabas, the present petitioners Nos. 5 and 6. The Police thereupon searched the premises of the Loupanabas and seized 250 pots of paddy which they produced before the Court.

The present respondents Nos. 3 and 4. Komlasana Devi and Ombisana Devi, presented an application to the "Magistrate, probably on 5-1-1970, praying that the seized paddy be entrusted to them until disposal of the case u/s 107 Cr.PC It was on 8-1-1970 that the Magistrate passed an "order entrusting the paddy to respondents Nos." 3 and 4 against a bond of Rs. 3,000/-. Aggrieved by that order the present six petitioners went" in revision to the Court of the Sessions Judge to challenge its legality. However, the learned Additional Sessions Judge, to whom the case was transferred for disposal, rejected the revision on holding that the paddy hadvbeen entrusted to respondents Nos. 3 and 4 for custody only temporarily for the duration of the case u/s 107 Cr.PC and that he did not feel inclined to interfere with the discretion exercised b.y the Magistrate in the matter of choice of the custodian. Dissatisfied with that order the six petitioners have come up in revision to this Court.

3. Two questions of law that were debated in this Court are. (1) whether the Police had any authority for seizing the paddy from the possession of the petitioners Nos. 5 and 6, and (ii) whether the Magistrate had any jurisdiction to order the production of the paddy before him and then placing it in custo-dia legis during the pendency of the case u/s 107, Criminal P.C. Broadly stated, the Criminal P.C. contemplates seizure of property by the Police in three ways. Firstly, when a Police officer arrests a person u/s 51 of the Code and comes by certain articles on his personal search. Such articles, the section enjoins, shall be placed by the Police officer in safe custody. If the articles recovered happen to be offensive weapons, the Police officer, according to Section 53 of the Code, is bound to deliver them to .the Court or officer before which or whom the arrested person is required by the Code to be produced. In the second place, Section 550 of the Code provides that any Police -officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under

circumstances which create suspicion of the commission of any offence.

And thirdly, the Police may seize some property during the course of investigation of a case. The subject of disposal of the property interim or final, is dealt with in chapter XLIII of the Code. Any order by a Criminal Court disposing of the property, not in conformity with some provision of this chapter will have no legal sanction. In his report dated 2-12-1969, the Sub-Inspector, in charge of the Police station, Thoubal, categorically mentioned that he had seized 340 pots of paddy from the Loupanabas u/s 500 Criminal P.C. That report also included a prayer by the Sub-Inspector for an order about the disposal of the seized paddy in terms of Section 523 Criminal P.C. The Sub-divisional Magistrate, however, did not indicate in his order dated 8-1-1970 under what provision of law he was entrusting the paddy to respondents nos. 3 and 4, though that order was passed in a case registered u/s 523 Criminal P.C. The learned Additional Sessions Judge assumed, as is evident from his order dated 22-8-1970, that the Magistrate had entrusted the seized paddy to the present respondents Nos. 3 and 4 u/s 516A and not u/s 523 of the Code.

What weighed with the Additional Sessions Judge in recording that finding perhaps were the facts that Section 516A deals with disposal of property during the pendency of inquiry or trial, that an inquiry under Section 107, Criminal P.C. was pending against both the parties in the Court of the Magistrate when he passed the impugned order, that in such context the case would aptly fall u/s 516A, and that Section 523 Criminal P.C. being a residuary section relating to disposal of property by a Court it could apply only if a case would not fall under any other specific provision of the Code. However, quite regretfully, the learned Additional Sessions Judge skipped over the other point that arose before him, namely, whether the seizure itself was justified in law and if so under what provision. Shri Imo Singh, appearing for the respondents, canvassed at the bar that the seizure had been made u/s 550 of the Code. I regret my inability, however, to subscribe to that view.

4. That section relates to seizure of any property which may be alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of the commission of any offence. Shri Imo Singh did not contend in this Court that the seized paddy was either alleged or suspected to have been stolen, nor could he satisfy this Court that the paddy had been "found under circumstances which create suspicion of the commission of the offence". The paddy was admittedly lying in the custody of Loupanabas. None charged them with the commission of any offence respecting that paddy. Therefore, the provisions of Section 550 in terms do not apply to the seized paddy and so the Police could not have seized the same on the strength of that section. It is germane to mention that the Loupanabas were never arrested by the Police, nor was the seized paddy recovered from their persons. Nor, again, any case had been registered or investigated into respecting the seized paddy.

Consequently, there is no escape from the conclusion that the seizure of paddy

by the Police was wholly unjustified and so I cannot resist observing that the Police had both abused and mis-used the undoubtedly extensive powers that they wield. I regret more the indiscretion exhibited by the Magistrate in directing the Police to produce the paddy before him and then entrusting that paddy to respondents Nos. 3 -and 4. He apparently took the latter step in exercise of his powers u/s 523 of the Code. Let us examine the section to determine if he could have taken recourse to its provisions. Sub-section (1) of that section provides that the seizure by any police-officer of property taken u/s 51, or alleged to be suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. By its express phraseology the sub-section relates to the seizure made either u/s 51 or u/s 550 of the Code.

I have held above that the paddy had neither been seized u/s 51, nor could it be seized u/s 550. If the Magistrate had cared to examine the provisions of those two sections, he could not have committed the excess of making over the paddy to respondents Nos. 3 and 4, instead of directing its return to petitioners -Nos. 5 and 6 from whose custody it had been seized.

5. Shri Imo Singh urged on the strength of AIR 1919 Mad 20 (2), *In Re. Pydi Ramanna*, and AIR 1936 Nag 143. *Emperor v. Benimadhao*, that Section 516-A of the Code covers the seizures made in cases falling under chapter VIII of the Code. This argument assumes that the impugned order had been made by the Magistrate u/s 516-A though the Magistrate obviously acted u/s 523. Section 516-A, as stated above, does not take in its sweep the seizure of the kind we have to deal with. That section applies to property regarding which any offence appears to have been committed, or which appears to have been used for the commission of any offence. Shri Imo Singh did not contend in this Court that any offence had been committed respecting the seized paddy or that the paddy had been used for the commission of any offence. Therefore, the submission of Shri Imo Singh that the Magistrate had dealt with the property u/s 516-A has to be negated.

6. The two authorities relied upon by Shri Imo Singh are clearly distinguishable on facts. What happened in the Madras case is that five persons were arrested as suspects and then proceeded against u/s 110 of the Code. At the time of their arrest some cash was found on their persons and so it was taken into custody by the Police. The Magistrate ultimately bound them all under Clause (b) of Section 109 of the Code and also made an order confiscating to the Government the money earlier recovered by the Police from their persons. None of the five persons challenged the confiscation order. However, the High Court suo motu examined the validity of confiscation order in exercise of its revisional powers. Ultimately, the High Court held that the confiscation had been made u/s 517 of

the Code and that the Magistrate had authority to do so. The High Court also held that proceedings under the preventive sections of the Code fall within the meaning-, of the expression "inquiry" used in Section 517 of- the Code.

Sub-section (1) of Section 517 states that when an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the-disposal by destruction, confiscation oi delivery to any person claiming to be-entitled to possession thereof or other1 wise of any property or document pro-, duced before it or in its custody or regarding which any offence appears to-have been committed, or which has been used for the commission of any offence I think the High Court was justified in-holding that the amount recovered from, the five persons arrested by the Police u/s 109 of the Code had valid-ly been confiscated by the Magistrate. It is for the reasons that the expression "inquiry" used in Section 517 appears to-be wide enough to encompass a proceeding under Chapter VIII of the Code and that proceeding had concluded when the confiscation order was passed. -The distinguishing features of the reported case vis a vis the one in hand are that the property involved had been recovered from the physical search of the five persons arrested by the Police in virtue of the powers given by Section 51 of the Code, and that property had to be disposed of in one of the modes contemplated by Section 517 (1) after the conclusion of the inquiry.

The Police had the authority of law, vide Section 51, to recover the articles found upon the five persons at the time of thje search following their arrest, and once the Police produced those articles before the Court, the latter had the Jurisdiction in terms of Section 517 (1) to dispose of the same in one of the modes mentioned therein. However, the paddy seized in our case was never recovered from the search of the person of any one involved in the case u/s 107 of the Code. It can bear repetition to state that the two parties, one comprising of the petitioners Nos. 1 to 4 and the other constituting of respondents Nos. 1 and 2, were hauled up u/s 107. while the paddy was seized from the Loupanabas, who are the petitioners Nos. 5 and 6. Consequently, our case is clearly distinguishable from the case dealt with by the Madras High Court.

7. Likewise, in the Nagpur case Benimadhao was arrested by the Police as a suspicious character u/s 109 of the Code and. a sum of Rs. 206/- found on his person was seized by the Police. He could not explain satisfactorily from where he had got that money. The Magistrate consequently held it to be suspicious property and confiscated the same to the Government while ordering Benimadhao to execute a bond u/s 118 of the Code. In appeal, the Sessions Judge set aside the order demanding security as also the order forfeiting the sum of Rs. 206/- to the Government. The Government then filed a revision in the High Court challenging the validity of the order setting aside the forfeiture of the amount. The point that fell for determination before the High Court was whether the proceedings under chapter VIII of the Code fall within the scope of Section 517. The High Court held that they do. Obviously, the facts of this case are

analogous to the facts of the Madras case and as such quite distinguishable from those of our case.

8. To sum up, the Police had no sanction of the law to seize the paddy from the custody of the petitioners Nos. 5 and 6 while recommending proceedings u/s 107, Criminal P.C. against petitioners Nos. 1 to 4 and respondents Nos. 1 and 2; that the Magistrate equally lacked authority in directing the Police to produce the seized property before him; and that the Magistrate could neither deal with such property u/s 516-A. as contended by Shri Imo Singh, nor u/s 523 as he (the Magistrate) purports to have done. Section 516-A would not apply because the seized paddy is not a property, regarding which any offence appears to have been committed, nor it appears to have been used for the commission of any offence. And Section 523 (1)" is not attracted for the reason that the paddy had neither been seized u/s 51 of the Code, nor could it be seized u/s 550 for the reasons detailed above.

9. In the result, I allow the- revision petition, quash the order dated 8-1-1970 passed" by the Sub-divisional Magistrate, and direct respondents Nos.- 3 and 4 to forthwith deliver the paddy entrusted to them to the petitioners Nos. 5 and 6 against receipt. After the respondents Nos. 3 and 4 have complied with the direction given, they shall be released from the bond in the sum of Rs. 1,000/- executed by them when the Magistrate made over the paddy to them.