

(1971) 11 KL CK 0027

In the High Court Of Kerala

Case No : Criminal R.P. No's. 279, 280 and 281 of 1971

Sivasankara Pillai

APPELLANT

Vs

The State of Kerala and others

RESPONDENT

Date of Decision : 04-11-1971

Acts Referred:

Penal Code, 1860 (IPC) — Section 379, 380, 457, 461

Citation : (1971) KLJ 823

Hon'ble Judges : E.K. Moidu, J

Bench : Single Bench

Advocate : P.K. Kesavan Nair and K.N. Narayana Pillai, for the Appellant; T.M. Cherian for Respondents 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

E.K. Moidu, J.—A trio, the petitioners who are P.Ws. 17 to 19 in C.C. 857 of 1969 of the Sub Magistrate's Court, Parur preferred each of these petitions against the order of the Sub Magistrate directing the return of M.O. 12, gold bangles and M.Os. 14 and 15 series gold pieces to P. Ws. 1 and 29 on acquittal of the 3 accused persons in respect of offences under Sections 380, 457 and 461 of the Penal Code. The 3 accused persons were charged for the theft of M.Os. 1 to 19 out of a box which was kept in a room of the house in which P.Ws.1 and 29 lived on the night of 21-6-1967. The charges were laid against the accused persons on the strength of the first information furnished by P.W.1. During the investigation, the accused persons were arrested on 16-11-1967. On the basis of the information furnished by the accused persons, M.Os.1 to 19 were seized on 20-11-1967, M.O. 12 bangles from P.W. 17 under Ex.P12 mahazar, M.Os. 14 series from P.W. 18 under Ex. P13 mahazar and M.O. 15 series from P.W. 19 under Ex. P19 mahazar. They admitted that the gold of which MO. 12 bangles were made as well as M. Os. 14 and 15 were sold to them by the 1st accused in June 1967. The 1st accused also admitted his statement that he sold the identical gold pieces and some bangles to P.Ws.17 to 19. But, the accused

persons were finally acquitted of the charges as the trial Magistrate came to the conclusion that the prosecution case had not been made out against them beyond a reasonable doubt. The acquittal order was on 31-12-1968.

2. The trial Magistrate on a consideration of the evidence in the case and other circumstances felt that P.Ws. 1 and 29, the complainants in the case had established their possession over these articles and that they being in possession prior to the theft they would be entitled to get the movables returned to them and accordingly passed the order returning the identical movables to P. Ws. 1 and 29. It is against the order that these revision petitions are filed.

3. Ordinarily when no offence has been committed in respect of any property in the custody of the court it should restore the property to the person from whose possession it was seized. It is held in AIR 1948 249 (Nagpur) that upon a conviction of an accused u/s 379 I.P.C. the rightful owner and not the bona fide purchaser of property from accused, without knowledge of its being stolen, is entitled to its return. But, where no crime is made out the Magistrate should return the property to the party from whom it was taken unless there are special circumstances which would render such course unjustifiable. That is the view expressed as early as in V.K. Vaiyapuri Chetti v. Sinniah Chetty, AIR 1931 Mad 17.

4. So, there could be a deviation from the ordinary rule in cases where the special circumstances were against the person from whom the property had been seized. In Muthiah Muthirian v. Vairaperamal Muthirian, AIR 1954 Mad 214 those special circumstances are pointed out. It reads as follows:

But when there are circumstances showing that the culprit has not claimed the property as his specifically and when there are also no grounds to hold that the property could belong to him, and the question of ownership has not been gone into in the judgment and decided one way or the other and the discharge or acquittal is based upon inadequacy or doubtfulness of the proof offered, it would be unreasonable to return the stolen property to the accused person.

These principles are reiterated in State of Kerala v. Thiraviyam Panicker, 1960 K.L.T, 1051. Govinda Menon, J. has expressed the following opinion with regard to those special circumstances. It reads:

In normal circumstances, on acquittal or discharge the property would be returned to the person from whom it was seized. But when there are circumstances showing that the person concerned either has not claimed the property as his specifically or when there are no grounds to hold that the property could belong to the accused, or the evidence in the case would suggest that the property belongs to the complainant or when the discharge or the acquittal is based upon inadequacy or doubtfulness of the proof offered, the Magistrate has certainly got a discretion to return the property to the complainant and in such a case it may even be unreasonable to return the property to the accused persons. It depends on the facts of each case. No doubt it is not the function of a criminal court to decide nice questions involving

principles of civil law if there is a dispute between rival parties claiming return of the property. Some of the decisions have gone to the extent of holding that the court is entitled in such cases to keep the property in its custody pending the decision of a competent civil court. It is not imperative that in all cases of acquittal the Magistrate shall return the property to the accused.

5. Again in *Sivasankara Pillai v. Parukutty Amma*, 1963 KLT 381, Amma Chandy, J. pointed out that it cannot be laid down as a general rule that if no offence is found to have been committed in respect of the property produced before a criminal court and the accused is acquitted, the Magistrates should restore the property to the person from whom it was taken.

6. In *Padma Chandriah Vs. Pamjwomi*, , the learned single judge pointed out that the normal rule that the articles seized from a person who claimed the ownership thereof as the purchaser and the case of the complainant was dismissed and the accused was discharged, the property shall be returned to the person from whom it was seized did not apply in cases where exceptional circumstances existed as in the case reported in AIR 1954 Mad 214 referred to above. So, the qualifications referred to in all the decisions must be satisfied before departing from the normal rule that the articles shall be returned to the person from whom it was seized if the accused was discharged or acquitted in respect of the offence with which he stood charged.

7. In the light of the above rulings, it is desirable to consider the special circumstances which existed in this case. It may be noted that the proceeding u/s 517 of the Code of Criminal Procedure is a quasi civil proceeding which arises on the conclusion of an enquiry of trial in a Criminal Court for the purpose of disposal of any property produced before it or in its custody or regarding which an offence appears to have been committed or which has been used for the commission of the offence. An order under this Section only decides the question of possession and not that of ownership or title which has to be decided by a Civil Court. Ordinarily when no offence has been committed in respect of any property in the Court's custody, the Court should restore it to the person from whose possession it was seized. As pointed out already in exceptional cases where circumstances so warrant and the evidence so indicate that it should be inequitable to restore it to the possession of the person from whom it was seized, the Court may, in the proper exercise of its judicial discretion, restore it to a person who in its opinion is the person best entitled to its possession. Even though an accused had been acquitted due to the incomplete evidence or due to a bona fide doubt of the commission of the offence, it would not be a proper exercise of discretion to hand over the property back to the accused person or to the person to whom the accused sold the articles after the theft, because the confession that he had stolen the property from the house of the real owner though not admissible in the criminal trial would be admissible for the purpose of determining who would be the person best entitled to the possession of the seized property.

8. It is admitted that the 1st accused sold the gold to P.Ws. 17 to 19 at a lower rate than the market rate of gold. The theft was on 21-6-1967. During the investigation of the case by the Police, P. Ws. 17 to 19 admitted before them that the 1st accused sold the gold in June, 1967, but when it came up in trial, P.Ws. 17 to 19 stated that the sale was in 1966. The 1st accused also made a confessional statement that he committed theft of these articles from the house of P. Ws. 1 and 29 and the identical articles were sold by him to P.Ws. 17 to 19. In addition to these circumstances there was the finding by the trial court that P.Ws. 1 and 29 were in possession of the identical gold kept in a box in one of the rooms of their house, that the theft of those articles took place on the night of 21-6-1967 and that they were stolen articles. Having come to a conclusion by the trial Magistrate in the judgment by which he acquitted the accused persons that P.Ws.1 and 29 were in possession of the identical gold pieces and that they were stolen articles, the irresistible conclusion is that the accused persons sold these articles to P.Ws. 17 to 19 as stolen articles. The exceptional circumstances as laid down in the above decisions exist in the instant case to come to a conclusion that the persons who are entitled to be in possession of the movables are none other than P.Ws. 1 and 29 and not P.Ws. 17 to 19. However, the value of the gold pieces not being disputed, it is open to the revision petitioners to make out their title to the identical gold in a Civil Court and recover the value of the gold from the respondents 2 and 3 who are P.Ws. 1 and 29 respectively, if they are so entitled to get. The learned Sub Magistrate was, therefore, correct in his conclusion that the respondents 2 and 3 are entitled to be in possession of the articles in question. There is no ground to interfere with that conclusion. There is no merit in these revision petitions. In the result, these 3 revision petitions are dismissed.