
(1987) 10 RAJ CK 0043

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 52 of 1987

State of Rajasthan and Others

APPELLANT

Vs

P.G. Goswami and Another

RESPONDENT

Date of Decision : 19-10-1987

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 102, 357, 358, 457, 482
Penal Code, 1860 (IPC) — Section 147, 148, 149, 302, 307

Citation : (1988) 1 WLN 17

Hon'ble Judges : N.C. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

N.C. Sharma, J.—Crime Case No. 45 of 1986 under Sections 302, 307, 323, 324, 325, 147, 148 and 149, IPC was registered at Police Station, Takhatgarh. According to the version of the prosecution, Gajendra Singh deceased and other had murdered a person named Narsa and in that very incident Gajendra Singh himself was also murdered. During the investigation, Shri Prem Singh, Station House Officer, Police Station, Takhatgarh had seized a tractor belonging to deceased Gajendra Singh and bearing registration No. RJT 1965. On June 11, 1986 Ganpat Singh, as holder of power of attorney from Smt. Rajendra Kunwar widow of Gajendra Singh deceased made an application before the Judicial Magistrate, Sumerpur u/s 457 Cr. PC stating that on June 7, 1986, the police had seized tractor bearing registration No. RJT 1065 belonging to deceased Gajendra Singh and after the murder of the latter, Smt. Rajendra Kunwar was the owner of the tractor. It was mentioned that the police no longer required the tractor while Smt. Rajendra Kunwar was in its urgent requirement for ploughing her field. It was prayed that the tractor may be delivered to Smt. Rajendra Kunwar on her executing a bond with surety. On June 12, 1986 the Judicial Magistrate after hearing the application and the Asstt. Public Prosecutor(II) ordered that the applicant shall furnish a personal bond in the sum of Rs. 95,000/- and surety bond in the like amount to the effect that the applicant will produce the tractor in

the court whenever required to do so and will not in any way transfer it. The required personal bond and surety bond were furnished by Ganpat Singh. The Judicial Magistrate directed to the Station House Officer, Police Station, Takhatgarh to deliver the tractor No. RJT 1065 to Ganpat Singh against receipt in case the tractor was required in any other case.

2. It appears that when Ganpat Singh had made the above application on June 11, 1986 after giving its copy to the Asstt. Public Prosecutor, the latter had given a written "tahreer" to Ganpat Singh to hand it over to the station House Officer, Police Station, Takhatgarh. By this "tahreer" the Asstt Public Prosecutor had called for the case diary and a report from the Station House Officer, Police Station, Takhatgarh. On June 12, 1986 Ganpat Singh filed an affidavit before the Judicial Magistrate, Sumerpur stating that when he went to deliver the "tahreer" to the Station House Officer Prem Singh at Sanderao Camp, the latter started abusing Ganpat Singh and told that neither he will take the "tahreer" and nor he will send the case diary.

3. The Judicial Magistrate, Sumerpur had issued letter No. 1702 dated June 12, 1986 addressed to the Station House Officer, Takhatgarh. In this letter, it was mentioned that Ganpat Singh had already furnished personal bond & surety bond and the Court had ordered for the release of tractor No. 1065 to Ganpat Singh. It was further mentioned that in case the tractor was not required by the police in crime case No. 45 of 1986 and in any other case, the same may be handed over to Ganpat Singh against receipt.

4. On June, 13, 1986 Ganpat Singh made another application to the Court of Judicial Magistrate, Sumerpur that he had taken the original letter No. 1702 dated June 12, 1986 issued by the Court to the Station House Officer Police Station, Takhatgarh to deliver the tractor to him and handed over the the letter to the Station House Officer in the presence of Govind Singh son of Bheru Singh, but the Station House Officer started vulgarly abusing Ganpat Singh and scolded him as to how he dared to come to the Police Station. It was stated that the Station House Officer threw back & handed over the letter of the Court No. 1702 dated June 22, 1986 to Ganpat Singh and told that the latter may give back the letter to the Court and tell to the Court that he would not deliver the tractor and further told that what harm the Munsif-cum-Judicial Magistrate could cause to him as ultimately it is he who will deliver the tractor. Ganpat Singh prayed that the Court may pass orders for delivery of the tractor to him on that very day and necessary action may be taken by the Court against the Station House Officer, Police Station, Takhatgarh for contempt of court. Upon this application, the Judicial Magistrate, Sumerpur passed orders for issue of notice of the application to the Station House Officer Takhatgarh to show cause on June 16, 1986. It was also ordered that in case the tractor was not required in connection with the investigation, the same may be delivered to Ganpat Singh at once. On June 18, 1986 Prem Singh, Station House Officer presented an application in the Court through Shri Durgadan, Head Constable for obtaining copies of the various

orders passed by the Judicial Magistrate. The Judicial Magistrate passed orders on this application that copies may be issued as per rules on June 19, 19 86. On behalf of Ganpat Singh another application was filed on June 20, 1986 that he had again approached the Station House Officer, Takhatgarh with the second order of the Court dated 13th June, 1986, but the Station House Officer was refusing to deliver the tractor. The Court ordered for issue of notice to the Station House Officer to appear before him on June 21, 1986. On that day, the Asstt. Public Prosecutor presented the application signed by Prem Singh, Station House Officer wherein it was mentioned that the tractor which was seized during the course of investigation was still required by the police as it had to send the tractor to the Forensic Science Laboratory, Jaipur to obtain a report whether there were stains of human blood on the tractor or not and for this reason the tractor was not delivered to Ganpat Singh. The Judicial Magistrate heard arguments on June 21, 1986. The Judicial Magistrate passed an order in which it was mentioned that there was no recital in the case diary that there were stains of blood on the tractor. He stated that if stains of blood were not visible to the eyes on the tractor, then it is impracticable to have a report on the question from the Forensic Science Laboratory. No reply was filed earlier by Prem Singh in response to the notice issued on June 13, 1986 and it was only on June 21, 1986 that it was mentioned that the tractor had to be sent to Forensic Science laboratory. The Judicial Magistrate, therefore, ordered that in case blood stains were not visible to eyes on the tractor, there was no need to send it to the Forensic Science Laboratory. In spite of that if the Investigating Officer desired to obtain report from the Forensic Science Laboratory, he may take steps to call the expert at the Police Station and obtain his report. Prem Singh was further directed to produce the tractor before the Court on June 25, 1986.

5. On June 25, 1986 Prem Singh, Station House Officer made an application that the tractor was seized on June 8, 1986 and it was sent to the District Police Headquarters on June 16, 1986 for getting the chemical examination whether there were stains of human blood on the tractor or not. The Station House Officer mentioned that he had apprised with regard to the compliance of the Court's order to the Superintendent of Police and Addl. Superintendent of Police. The Superintendent of Police had talked with the Director, Forensic Science Laboratory on telephone to make the examination at the Police Station but the latter showed inability to bring all the necessary instruments and equipments to the Police Station. The Judicial Magistrate was of the view that the Station House Officer had not produced the tractor on June 25, 1986 and if they had to send the tractor to the Forensic Science Laboratory, Jaipur the same may be sent by truck but it was sent by road, Thus according to the Judicial Magistrate, the police authorities had once again acted in contempt of the orders of the Court. The Judicial Magistrate ordered that a notice should be issued to the Superintendent of Police, Pali to show cause why action may not be taken against him for contempt of Court and why the applicant may not be awarded damages on account of the willful delay caused by the police in delivering the tractor to the

police. On July 15, 1986, after perusal of the papers, it appears that the tractor was sent to the Forensic Science Laboratory on June 24, 1986. The Superintendent of Police was directed to obtain back the tractor and to hand it over to Ganpat Singh. It appears from the proceedings dated August 4, 1986 that although chemical report was received but the tractor did not reach back. The Station House Officer was required to produce the chemical report on August 8, 1986 along with the case diary. By his application dated July 15, 1986 Ganpat Singh claimed damages to the extent of Rs. 44,400/- from Prem Singh, SHO and other connected officers. Prem Singh filed reply to to the contempt application on August 2, 1986.

6. The Judicial Magistrate, Sumerpur decided the matter on August 12, 1986. He held that it was obligatory on the Station House Officer to make a report about seizure of the tractor to the Court u/s 102(3) Cr.PC at once but the Station House Officer did not make any report about the seizure before June 21, 1986. It was only on June 21, 1986 that the Station House Officer for the first time filed a reply that tractor had to be sent to the Forensic Science Laboratory. It was noted that there was no mention in the case diary that the tractor had stains of blood on it. The tractor was sent to Jaipur on June 24, 1986 by road. It was only when Ganpat Singh had made application on June 11, 1986 for handing over the tractor to him and the Court had passed orders for delivery of the tractor that on June 18, 1986, for the first time, it was noted in the case diary that the tractor has got to be chemically examined. In case, it was necessary to have the tractor examined chemically regarding alleged blood stains, this fact should have found place in the seizure memo of the tractor. The tractor was not sent to Jaipur by truck but by road. Moreover, it was sent for chemical examination after 16 days of the seizure of the tractor. All these irregularities were committed against law and the police had not satisfactorily explained as to why it did not deliver possession of the tractor to Ganpat Singh. According to the Judicial Magistrate Prem Singh, Station House Officer as well as the Superintendent of Police, Pali had committed contempt of Court and he moved to this Court for taking action against both these officials for contempt of his Court. The Judicial Magistrate also passed an order that Prem Singh, SHO and Superintendent of Police, Pali shall pay Rs. 4,000 as damages to the applicant within a month and till the time tractor was not produced before the Court, the applicant will be entitled further to for recover the damages at Rs. 100/- per day. Out of the amount of Rs. 4000/- 3/4th will be personally paid by the Superintendent of Police and 1/4th amount by Prem Singh, Station House Officer. That is how D.B. Criminal Misc. Contempt Application No. 1446 of 1986 is before this Court. Apart from that, the State of Rajasthan, Shri P.G. Goswami (who was at the relevant time Superintendent of Police, Pali) and Prem Singh, SHO have filed S.B. Criminal Miscellaneous Petition No. 52 of 1987 u/s 482 Cr.PC for quashing the order of the Judicial Magistrate so far as it has imposed compensation as against the Superintendent of Police and the Station House Officer. Since the compensation matter had arisen from the order of the Judicial Magistrate. Criminal Misc. Petition No. 52 of 1987 was

ordered on July 8, 1987 to be heard along with the contempt application.

7. We have heard Mr. P. Mohanani for the contemner i.e. Serva Shri P.G. Goswami and Prem Singh, Mr. Rajendra Chowdhary for Ganpat Singh and also Mr. S.K. Mathur, Public Prosecutor and have perused the record.

8. It goes without saying that Sub-section (3) of Section 102 of the Code of Criminal Procedure casts upon the Police Officer seizing any property which may be found under circumstances which create suspicion of the commission of any offence to forth with report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court the Police Officer can give custody there of to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same. Their Lordships of the Supreme Court in *Anwar Ahmad Vs. State of U.P.*, , while referring to the provisions to Section 523 of the Old Criminal Procedure Code of 1898, had observed that:

It would thus appear from a perusal of this provision that the moment a police officer seizes a property suspected to have been stolen or which is the subject matter of an offence, he has to report the matter to the Magistrate concerned and it is for the Magistrate to pass such orders as he thinks fit regarding the disposal of the property.

Section 102(3) Cr.PC is meant to be complied with in letter and spirit. A police officer cannot afford to seize any property and at the same time fail to forthwith report the seizure to the Magistrate. In the instant case, Prem Singh, Station House Officer, Takhatgarh acted in gross violation of law and with impunity in not forthwith reporting the seizure of tractor bearing registration No. RJT 1065 to the Judicial Magistrate, Sumerpur although the same was seized by him on June 8, 1986. The Judicial Magistrate issued orders on June 12, 1986 and June 13, 1986 to deliver tractor in question to Ganpat Singh in case the same was not required in any other case and despite that Prem Singh did not file any reply before June 21, 1986 that the tractor has to be sent to the Forensic Science Laboratory for chemical examination. Although Prem Singh, Station House Officer had taken copies of the proceedings and orders passed by the Judicial Magistrate by moving an application on June 18, 1985 but neither in his application made on June 21, 1986 and nor on June 26, 1986, he even refuted the allegations made by Ganpat Singh that he abused Ganpat Singh and uttered contemptuous words against the Court of Munsif cum Judicial Magistrate. At no stage Prem Singh stated that Ganpat Singh had not come to him to deliver the letters issued by the Court of Judicial Magistrate of 12th and 13th June, 1987. It was incumbent on Prem Singh to accept the orders of the Court and to move to the Court immediately, in case there was any difficulty in complying with the orders of the Court. But that was not done till June 21, 1986. Even the case diary was not produced on June 12, 1986. The case diary did not record that tractor had stains of human blood on it. The late sending of the tractor for chemical examination also throws sufficient

doubt on the conduct of Prem Singh, S.H.O. He had deliberately and wilfully failed to comply with the order of the Court and committed contempt of the Court of the Judicial Magistrate, Sumerpur. This Court strongly condemns and deprecates the action of the Station House Officer not only in acting illegally but also defying the order of the Judicial Magistrate for delivering the tractor to Ganpat Singh. We, however, refrain from punishing Prem Singh with imprisonment or fine because in para 7 of his reply filed by Prem Singh in this Court on February 28, 1987, he has submitted an unqualified apology. We, therefore, order that Prem Singh is discharged on his having made unqualified apology to the satisfaction of this Court.

9. So far as the then Superintendent of Police Shri P.G. Goswami is concerned, he had not much role to play. It was Prem Singh who had moved to the Superintendent of Police for chemical examination of the tractor and the same was sent by him to the Forensic Science Laboratory, Jaipur. The Superintendent of Police also tried to contact on telephone with the Director of Forensic Science Laboratory to come to the Police Station to make examination of the tractor but the latter showed his inability because it was difficult to bring the necessary equipments and instruments to the Police Station. Apart from that Shri P.G. Goswami has also submitted an unqualified apology before this Court. In our view Shri P.G. Goswami did not commit any contempt of the Court of the Judicial Magistrate, Sumerpur. We discharge the rule against him. D.B. Criminal Miscellaneous Contempt Application No. 1446 of 1986 is disposed of accordingly.

10. So far as S.B. Criminal Misc. Petition No. 52 of 1987 is concerned, we are of the view that Judicial Magistrate, in the circumstances, had no jurisdiction to impose a fine or to pass an order for payment of damages against Shri P.C. Goswami or Shri Prem Singh. Under the Code of Criminal Procedure, the Court has been empowered to order the payment of compensation by the accused to the victims of the crime (Section 357, Cr.PC). The only other provision for compensation is contained u/s 358, Cr.PC under which compensation is awarded to persons who are arrested. when there was no sufficient ground for causing arrest. Compensation cannot be awarded merely because the Station House Officer, Takhatgarh did not deliver the tractor to Ganpat Singh in time and delayed its delivery.

11. We, therefore, allow the application of the State of Rajasthan, P.G. Goswami and Prem Singh u/s 482 Cr.PC and quash that part of the order of the Judicial Magistrate, Sumerpur dated August 12, 1986 whereby he imposed compensation of the amount of Rs. 4000/- upon Superintendent of Police, Pali and Station House Officer Prem Singh and we also quash the further award of compensation at rate of Rs. 100/- per day till the tractor was delivered.