
(2007) 02 AHC CK 0082
In the Allahabad High Court

Tek Bahadur Singh and Fateh Singh

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 09-02-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 451
Penal Code, 1860 (IPC) — Section 380, 411

Citation : (2007) 02 AHC CK 0082

Hon'ble Judges : Amar Saran, J

Bench : Single Bench

Judgement

Amar Saran, J.—I have heard learned Senior Advocate, Sri Vijay Bahadur Singh, assisted by Sri Ashok K. Lal, for the revisionists and learned AGA for the State.

2. This criminal revision has been filed by Tek Bahadur Singh, who claims to be owner of 280 Kg. of copper rods which had been stolen from the Singh Forgings, to whom he had handed them over for some job work, A criminal case under Sections 380 and 411 IPC, PS Sahabad, District Ghaziabad, was registered against two accused persons and the same is pending trial before the CJM, Ghaziabad, as Case No. 4928 of 2005.

3. Fateh Singh of Singh Forgings moved an application before the CJM for release of the copper rods which was refused by an order dated 2.5.2005 on the ground that Fateh Singh was not the owner of the said rods and because the seized rods, which were recovered from the accused, Vinod and Sunil, was case property.

4. Fateh Singh filed a Crl. Misc. Application No. 482 Cr.P.C. against the said order which was, however, rejected by this Court by an order dated 23.8.2005 on the ground that the CJM had rightly held that the applicant Fateh Singh was not the owner of the copper rods nor did he produce any document to prove his ownership of the rods and further the same was case property. This Court further directed that the trial court should conclude the trial expeditiously, preferably within 4 months of the production of certified copy of that order before the court below.

5. The said order was produced before the CJM but it appears that the trial has not been concluded within the time allowed by the High Court order.

6. It may be noted that the revisionists also moved an application before the CJM for release of the property claiming themselves to be the owner of the recovered copper rods but the same was also rejected on 19.5.2005 by the CJM observing that as the said material was case property, hence the same could not be released in favour of the revisionists. The revisionists again made an application on 11.8.2006 but the learned magistrate was pleased to reject the same by his order dated 11.8.2006 on the ground that the said prayer for release of the goods has already been rejected by the High Court on 23.8.2005 in the case of Fateh Singh.

7. I think there is some substance in the contention of the revisionists that if any property undisputedly belongs to them and in case there is no contesting claimant for the same, even if it is case property, there is no absolute fetter on the release of the same by the Court in exercise of powers u/s 451 Cr.P.C or any other applicable provision of the Code of Criminal Procedure.

8. In this connection the revisionists' counsel has drawn my attention to the case of Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat, wherein it is mentioned that in exercise of powers u/s 451 Cr.P.C. it is possible to release the seized goods if the owner is able to show that they may remain unused or could be damaged or misappropriated if it lies unattended in the police station. However, certain conditions, such as making a proper panchnama, taking photographs of the articles and requiring a bond from the person to whom the property is handed over to produce the article at the time of trial and releasing the items after taking appropriate security have been suggested in the aforesaid decision.

9. It is apparent to me that the trial court for some reason has not been able to dispose of the trial within 4 months of the production of the order before it and in fact the earlier order of this Court was passed as far back as on 23.8.2005, The learned Counsel for the revisionist suggests that it is because the accused Vinod and Sunil have jumped bail and are absconding. Be that as it may, more than 1 1/2 years have elapsed since the earlier order of this Court. However, as it is also not known to me whether the accused have set up a claim for the property as their own, I think it would be appropriate to direct the learned CJM to consider the application of the revisionist for release of the goods in his favour subject to the conditions as imposed by the apex Court in the case of Sunderbhai Ambalal Desai (supra), after weighing the various pros and cons of the matter including the reasons for the failure of the Court to dispose of the trial of the accused within 4 months as per the earlier order of this Court. The Court is directed to pass appropriate orders within two months of the production of the certified copy of this order.

10. With the aforesaid observations, the orders of the learned CJM dated

11.8.2006 is set aside and the CJM is directed to dispose of the revisionist's application for release of the articles accordingly.