

(2004) 03 KAR CK 0033

In the Karnataka High Court

Case No : Criminal Revision Petition No's. 286 and 287 of 2002

Thamanna Shivalingappa Teli

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 26-03-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452, 454
Penal Code, 1860 (IPC) — Section 380, 457

Citation : (2004) 4 KarLJ 451 : (2004) 3 KCCR 1733 : (2005) 1 RCR(Criminal) 423

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : Ravi B. Naik, for the Appellant; H.G. Ramesh, High Court Government Pleader for Respondent-1 and S.S. Koti, for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

K. Ramanna, J.—Both the revision petitions are directed against the common order of the learned III Additional Sessions Judge, Belgaum, dated 28-2-2002 in Cri. A. Nos. 120 of 1996 and 122 of 2001 relating to the delivery of the property.

2. The brief facts of the case are that; Thammanna Shivalingappa Teli, petitioner herein, lodged a complaint with the police stating that on 2-11-1985 gold articles were stolen from his house. The police took up investigation. One Appasaheb Chavan was arrested on 22-4-1986. Consequent upon the voluntary statement made by Appasaheb Chavan, several articles including gold ornaments were recovered from the possession of Ganeshmal Bhagwanji Rathod, 2nd respondent herein. When the properties were produced before the Court, the petitioner filed an application on 17-4-1989 for interim custody of the property, however, that application was not decided. On completion of investigation, the police filed charge-sheet against Appasaheb Chavan. The case was tried by the learned Judicial Magistrate First Class, Athani, in C.C. No. 795 of 1986 for offences under

Sections 457 and 380 of the IPC and the accused was convicted.

3. The gold ornaments were recovered by the police from the possession of the 2nd respondent. On conclusion of the trial, the petitioner filed another application for release of the gold articles to his interim custody. The second respondent also made an application for custody of the articles. The 2nd respondent who was examined as P.W. 3 in the case, in his evidence before Court denied any recovery of the material objects from his possession. The learned Magistrate held that the petitioner and the second respondent should establish their title to the properties in the Civil Court and then the properties should remain in the custody of the Court. The petitioner aggrieved by the said order of the Trial Court filed on appeal in Cri. A. No. 120 of 1996 u/s 454 of the Cr. P.C. and the 2nd respondent also filed an appeal in Cri. A. No. 122 of 2001 before the III Additional Sessions Judge, Belgaum. The learned Sessions Judge by his common order dated 28-2-2002 rejected the appeal filed by the petitioner and allowed the appeal filed by the 2nd respondent. Dissatisfied with the order of the learned Sessions Judge dated 28-2-2002 dismissing Cri. A. No. 120 of 1996 the petitioner has preferred this revision. The petitioner has also filed Cri. R.P. No. 286 of 2002 challenging the order dated 28-2-2002 passed in Cri. A. No. 122 of 2002 allowing the appeal of the 2nd respondent.

4. I have heard the learned Counsels appearing for the parties and the learned High Court Government Pleader for the State.

5. Learned Sessions Judge in passing the order impugned held that the police have seized about 400 grams of gold, whereas the complainant had lost more than 900 grams of gold ornaments and the seized gold in this case is not the property in respect of which an offence has been committed and that the identity of the property is lost. He also held that though second respondent who was examined as P.W. 3 was declared hostile in a criminal case, it does not affect his right to claim the property and admittedly, the property was seized under a mahazar from the possession of P.W. 3, who is a licence holder to deal in gold and silver articles and he need not produce any documentary evidence to show his title. He also held that there was no charge against the second respondent that he had received the stolen articles from the accused knowing fully well that the said articles were stolen property and the 2nd respondent is not made as accused in the criminal case and therefore, ordered return of the property to the respondent. In coming to the conclusion, learned Sessions Judge has relied upon a decision in case of State Bank of India Vs. Rajendra Kumar Singh and Others, wherein, it has been held thus.--

"(B) Criminal Procedure Code, 1898, Sections 517 and 520 --Bank receiving currency notes in ordinary course of its business without suspicion of the notes being involved in commission of an offence -- Seizure of notes by police during investigation of offence -- Direction of High Court to hand over notes to person from whom accused had received them, held illegal -- Bank had a "right to possess" the notes within Section 517.

R and V had handed over 21 currency notes of denomination of Rs. 1,000/- each to K "for the criminal purpose of duplication". In the course of an investigation of a case under Sections 420, 406 and 120-B of the IPC, against K, the police seized the currency notes in question from the State Bank, which had received the notes in the normal course of its business and without any knowledge or suspicion of their having been involved in the commission of an offence. In the proceedings that followed the investigation in that case, K was acquitted and the Sessions Court directed the return of currency notes to the Bank on the application made u/s 517(1). In appeal to High Court the order of acquittal was set aside and K was convicted under Sections 420, 406 and 120-B of the IPC. The High Court on the application made by R ordered the currency notes to be handed over to R and V:

Held that the High Court had not exercised its discretion, conferred, under Sections 517 and 520, according to proper legal principles and hence its order of return of property to R and V was liable to be set aside".

6. In the decision in 1989 Cri. L.J. 126 (NOC), relied upon by the respondent, it is observed that it is only when the lawful or rightful title to hold property is not established then it should be ordered to be delivered to the person in whose possession it was at the time of seizure, since a presumption arises that a person actually in possession of the property is the owner thereof unless the contrary is shown. From this decision it is clear that the person claiming possession of the property should have lawful or rightful title to hold the property.

7. Section 452 of the Cr. P.C. says that on conclusion of the trial, the Court may make such an order as it thinks fit for the disposal of the property or deliver to any person claiming to be entitled to possession thereof or otherwise of any property or document produced 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. Therefore, in this case, it should be shown that in respect of the property, namely, the gold ingot, an offence has been committed. The property need not be one exactly the same that has been stolen, it can be equivalent of the property converted after the theft has been committed. Keeping the observations in the above decisions, I will now see whether there is any perversity or illegality in the order impugned of the learned Sessions Judge.

8. Learned Counsel appearing for the revision petitioner contended that the 2nd respondent has turned hostile to the prosecution stating that he does not know the accused and that no articles were seized from his shop and therefore, he is not entitled for the release of the articles to his custody. He farther contended that the material objects were seized on the voluntary statement of the accused, which revealed that the articles were stolen from the house of the petitioner and therefore the voluntary statement is admissible in evidence for the purpose of release of material objects. In support of this submission, he relied upon the decision in case of K.R. Haris Chandra Naik Vs. State, . In this decision, this Court by referring to the earlier decisions rendered in Veerabhadrapa v.

Govindamma and Ors. 972 Mys. L.J. 377 : ILK 1973 Kar. 64 has held that for the purpose of determining the entitlement of the seized property the statements recorded by the police u/s 161 and other documents like panchanama etc., can be looked into even though panch witnesses have turned hostile and even though the evidence of Investigating Officer in that regard is found unacceptable. In the said decision, this Court has also referred to the decision in Dhanraj Baldeokishan through its partner Dhanraj Baldeokishan and Another Vs. The State, wherein it is held that even a confessional statement which is otherwise inadmissible in evidence against the accused can be made use of for determining the question of return of property. In another decision in case of Bal Kishan and Another Vs. State of Rajasthan and Others, it is held that the statement of an accused or a witness can be looked into for disposal of the property, which takes place at the conclusion of the enquiry or trial of a case.

9. In the decision in case of Sher Singh v. State 1981 Cri. LJ. 1387 (Del) it is held that once the source of possession is traceable to theft or other criminal act, then in whomsoever's hand the property may have passed and however bona fide the last purchaser may be, the possession must be restored to the person from whom it was taken by the criminal act.

10. Learned Counsel for the revision petitioner contended that the voluntary statement of the accused, which is admissible in evidence for the purpose of release of the articles, disclosed that the articles were stolen from the house of the petitioner and that the 2nd respondent is the receiver of stolen property, therefore, the order of the Sessions Judge is erroneous and unsustainable in law. In this case, the theft had occurred on 3-11-1985 and gold ornaments weighing 891/2 tolas and silver articles weighing 45 tolas were lost. The police seized the property on 22-4-1986, after the lapse of 5 months. The gold ornaments were seized in the form of ingot from the possession of the 2nd respondent and hence the identity of the property was lost. It is true that the property need not be one exactly the same that has been stolen, it can be equivalent of the property converted after the theft has been committed. But, in the case on hand, the ingots seized from the possession of 2nd respondent has not been proved to be the stolen properties. It cannot be gathered from the evidence that the ingot seized from the possession of the 2nd respondent was converted into from stolen gold ornaments. As held in the decision cited supra, it is a settled position in law that the statement of the accused or a witness can be looked into for disposal of the property which takes place at the conclusion of the enquiry or trial of a case. The panchanama discloses that the gold ingots were seized from the possession of the 2nd respondent. The Investigating Officer has also testified to the fact of recovery of the articles from the possession of second respondent. The description, weight and other particulars of the seized gold do not tally with the description of the gold articles stolen. Since the source of possession is not traceable to theft, the decision in Sher Singh's case, supra is not of any help to the petitioner. The 2nd respondent is not found to be the receiver of stolen property. Therefore, I find that the Sessions Judge was justified in concluding

that the seized articles are not the property in respect of which an offence had been committed and that the gold ingots were not the converted shape of stolen ornaments. He has not committed any illegality in delivering the articles to second respondent as he was prima facie entitled to its possession.

11. In the result, there is no merit in both the revision petitions and they are consequently, dismissed.