

Kanwar Ranjit Singh Sandhoo v. The State of Punjab (Sodhi, J.)

intention appears, be construed as references to the provision so re-enacted. No provision to the contrary has been pointed out to me. The Punjab Chaukidara Rules, 1876, which were framed under the original section 39-A of the Punjab Laws Act, 1872, would, accordingly be deemed to have been passed under the substituted section 39-A which was re-enacted by Act XXIV of 1881. I am, therefore, unable to find any force in this submission of Mr. Gaur.

(8) No other point was argued before me in this case. All the attacks of Mr. Gaur, against the Deputy Commissioner's order having failed, this petition must succeed. I accordingly allow this petition and quash the impugned order of the Commissioner (Annexure 'C'), dated January 15, 1970, as being wholly without jurisdiction and uphold the order of the Deputy Commissioner (Annexure 'B'), dated April 28, 1969, as the Deputy Commissioner had the jurisdiction to pass that order. In the circumstances of the case, the parties are left to bear their own costs.

N. K. S.

REVISIONAL CRIMINAL

Before H. R. Sodhi, J.

KANWAR RANJIT SINGH SANDHOO,—*Petitioner.*

versus

THE STATE OF PUNJAB,—*Respondent.*

Criminal Revision No. 48-M of 1969.

November 10, 1970.

Criminal Procedure Code (V of 1898)—Sections 435, 436, 437, 438 and 523—Punjab High Court Rules and Orders, Volume V—Rule 3 of Chapter 1-A—Revision against a non-appealable order of an original Court—Whether entertainable by the High Court without the Sessions Court being moved first—Section 523—Scope of inquiry under—Stated.

Held, that it has been the usual practice of the Punjab Court to decline to consider an application under section 439, Criminal Procedure Code, unless the petitioner first moves the Court of Session or the District Magistrate as the case may be and that a revision petition would be entertained directly only on exceptional or extraordinary grounds. This salutary practice which has meaning behind it has been adopted in the rules framed by

the High Court. Rule 3 of Chapter 1-A of the Rules and Orders of the Punjab High Court, Volume V, prohibits the Deputy Registrar from receiving a petition for revision of an order of an original Court in a non-appealable case unless the applicant files with his petition a copy of the judgment of the Sessions Judge or the District Judge to show that he applied to one or the other and his petition was refused. The mere fact that the petition was admitted by the Court cannot make any difference whatsoever in the matter of enforcement of the rules. No doubt, it is the High Court alone which can ultimately pass a final and effective order correcting the one passed by a Subordinate Court and grant relief to the petitioner, if any available under the law, but sections 435, 436, 437 and 438 of the Code also confer on the authorities specified therein a controlling power of supervision and it is not correct in the administration of justice, that those authorities be deprived of the exercise of that jurisdiction. The High Court must also have an additional advantage of having the views of those authorities in disposing of the revision petition if and when made to it. Thus the High Court will usually decline to consider an application under section 439 of the Code unless the Court of Sessions has been moved in the first instance and that it will entertain directly only on exceptional or extraordinary grounds.

(Para 3)

Held, that section 523 of the Code gives wide powers to a Magistrate to make such an order as he thinks fit respecting the disposal of property seized by the police on suspicion that the same is stolen one. It is true that the scope of an inquiry is restricted to the determination of the question of right to possession and not to ownership and that normally the property is returned to the person from whom it is seized. What is a proper order to be passed, however, depends on the facts and circumstances of each case and some time the matter of ownership cannot be completely divorced from that of possession. An order under section 523 is not a final adjudication of the rights of the parties with respect to the property so seized and they can have their title declared thereto by a civil Court.

(Para 5)

Petition under Section 561/A of the Criminal Procedure Code, for revision of the order of the Court of Shri Iqbal Singh, Judicial Magistrate, 1st Grade, Amritsar, dated 12th May, 1969, ordering that the attached vehicles PNA 4581, PNA 4801 and PNA 6061, be released from attachment and handed over to M/s. Inter-continental Agencies, through the petitioner Shri Narinder Singh Sarkaria with the condition that the buses will not be sold, pledged or created any other bar on these buses, till the decision of the writ petition by the Hon'ble High Court, and further ordering that necessary intimation to the Official Receiver to hand over the attached buses to M/s. Inter-continental Agencies (P) Ltd. be issued.

Application on behalf of M/s. Inter-continental Agencies. Private Ltd., 11, Curzon Road, New Delhi, for the return and handing over the buses No. PNA-4581, PNA-4801, PNA-6061 Re: case State versus Ranjit Singh and others under Section 379, I.P.C.

J. S. SHAHPURI, ADVOCATE.

N. S. BHATIA, ADVOCATE, FOR ADVOCATE-GENERAL, (PUNJAB).

K. S. KWATRA, ADVOCATE, FOR INTER CONTINENTAL AGENCIES.

JUDGMENT

SODHI, J.—(1) This revision petition must be dismissed on the short ground that the petitioner who is aggrieved by an order passed by the Judicial Magistrate, 1st Class, Amritsar, under section 523, Criminal Procedure Code, did not move the Sessions Judge in the first instance.

(2) Facts which led to the revision petition are not much in controversy. Three buses Nos. PNA 4581, PNA 4801 and PNA 6061 are said to have been given under a hire-purchase agreement to M/s. Sandhu Roadways Private Limited, Amritsar, represented through Ranjit Singh, respondent. For the alleged non-payment of passenger tax by M/s. Sandhu Roadways, the Punjab Government seized the vehicles to put them to auction for recovery of the arrears of tax. M/s. Inter-continental Agencies Private Limited instituted a suit against the Punjab State and M/s Sandhu Roadways disputing the right of the State to recover the tax by sale of the buses which were claimed to belong to the plaintiff company and had only been hired to M/s. Sandhu Roadways. This suit was decreed on 22nd April, 1966, and the Punjab State restrained from attaching the buses or selling the same for recovery of the arrears of tax. It is not clear as to what happened to the buses after decision of the suit but a case under section 379, Indian Penal Code, was registered against Ranjit Singh and others at the instance of one Narinder Singh who laid a claim to the buses on the ground that he was an appointed attorney. The allegation was that the petitioners Ranjit Singh and others had committed theft of the buses. No challan was put in Court and the police applied for cancellation of the case which was ordered and the accused discharged on 24th July, 1967. When the case was under investigation, both Ranjit Singh who described himself as Proprietor of M/s. Sandhu Roadways and Narinder Singh applied for interim possession of the buses. It was ordered on 7th October, 1966, that the buses be handed over to an Interim Receiver and a notice should issue to M/s. Inter-continental Agencies so that no order was passed without hearing them. The latter company put in appearance and made an application for the restoration of buses. Dispute about the buses came to the High Court as well in writ petitions but it is not necessary for the purposes of the present revision petition to refer to the details of those cases. Suffice to mention that under orders of B. R. Tuli, J., passed on 25th March, 1969, the criminal Court was permitted to pronounce orders in the

proceedings pending before it. It appears that disposal of the applications about the custody of the buses had been held up. By the impugned order of 12th May, 1969, Judicial Magistrate considered it fit that the buses be handed over to M/s. Inter-continental Agencies in view of the decree passed by the civil Court. It is against this order that the revision petition has now been filed.

(3) It has been the usual practice of this Court to decline to consider an application under section 439, Criminal Procedure Code, unless the petitioner first moves the Court of Session or the District Magistrate as the case may be, and that a revision petition would be entertained directly only on exceptional or extraordinary grounds. This salutary practice which has meaning behind it has been adopted in the rules framed by this High Court. Rule 3 of Chapter 1-A of the Rules and Orders of the Punjab High Court, Volume V, prohibits the Deputy Registrar from receiving a petition for revision of an order of an original Court in a non-appealable case unless the applicant files with his petition a copy of the judgment of the Sessions Judge or the District Judge to show that he applied to one or the other and his petition was refused. The mere fact that the petition was admitted by this Court cannot make any difference whatsoever in the matter of enforcement of the rules. It was in fact the duty of the petitioner to have stated in the petition and invited the attention of the Motion Bench to the circumstances which he considered to be of exceptional or extraordinary nature justifying directly filing the revision petition in contravention of the rules. He cannot take advantage of his own omission and claim that since the petition has been admitted, it cannot or should not be dismissed on account of his failure to comply with the aforesaid rule 3. No doubt, it is the High Court alone which can ultimately pass a final and effective order correcting the one passed by a Subordinate Court and grant relief to the petitioner, if any available under the law, but sections 435, 436, 437, and 438, Criminal Procedure Code, also confer on the authorities specified therein a controlling power of supervision and it is not correct in the administration of justice that those authorities be deprived of the exercise of that jurisdiction. The High Court must also have an additional advantage of having the views of those authorities in disposing of the revision petition if and when made to it.

(4) Mr. J. S. Shahpuri, learned counsel for the petitioner, has cited a number of authorities to all of which it is not necessary to

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refer. He has strenuously relied upon *Narayanan v. Bhargavi and others* (1), *Shankarshet Ramshet Uravane v. Emporor* (2), *Akal Mahtan and others v. Mahabir Mahton* (3) and *Abdullahkhan v. Emperor* (4). *Beaumont, C.J.*, in *Shankarshet's case* (2), has held that "the Criminal Procedure Code confers the widest powers of revision upon the High Court and Judges should not seek to lay down rules which confine that discretion in a manner in which the Legislature has not seen fit to confine it". That case has no bearing on the point. The sole question there was whether the High Court should under its revisional jurisdiction set aside a conviction on the ground that the rule of practice which requires the evidence of an accomplice to be corroborated had not been adhered to. The argument that the High Court would not disturb an order of conviction in its revisional jurisdiction on the mere ground that the rule of practice requiring corroboration had not been followed was repelled. It was not the rule of the type now before us that was under consideration in that case. In *Narayanan's case* (1) as well, there was no rule framed by the High Court and it was only the practice on the basis of which an argument was raised that the party invoking revisional jurisdiction should have first moved the Court of Session or the District Magistrate. The learned Judges constituting the Full Bench took the view that since the law conferred a right on the party to approach the High Court under section 439, Criminal Procedure Code, the effect of asking him to go first to the Sessions Judge would amount to putting him in double-jeopardy. This was considered by the learned Judges to be an unreasonable restriction on the exercise of the right so conferred when the Sessions Judge or the District Magistrate could not give any effective relief and were competent only to make a recommendation. With utmost respect to the learned Judges, it is not possible to accept their view in the presence of rule 3 referred to above framed by the Chief Justice and Judges of this Court, and it must be adhered to except in very extraordinary circumstances.

(5) On merits as well, there is no substance in the revision petition. It is a common ground that the order was passed under section 523, Criminal Procedure Code, and not one under section 517, thereof. Section 523 gives wide powers to a Magistrate to make

(1) I.L.R. (1968) II Kerala 138 (F.B.).

(2) A.I.R. 1933 Bom. 482.

(3) A.I.R. 1924 Patna 145.

(4) A.I.R. 1932 Sind, 28.

such an order as he thinks fit respecting the disposal of property seized by the police on suspicion that the same is stolen one. It is true that the scope of an inquiry is restricted to the determination of the question of right to possession and not to ownership and that normally the property is returned to the person from whom it is seized. What is a proper order to be passed, however, depends on the facts and circumstances of each case and some time the matter of ownership cannot be completely divorced from that of possession. An order under section 523 is not a final adjudication of the rights of the parties with respect to the property so seized and they can have their title declared thereto by a civil Court. In the instant case, there was no dispute as to title since the civil Court had already declared it to vest in M/s. Inter-continental Agencies Private Limited. The buses had been taken by M/s. Sandhu Roadways Private Limited under a hire-purchase agreement and it is not known whether by default, if any, in regard to payment of the instalments they had forfeited their right to possession. No evidence was produced by the petitioners to show that they had a right to possession and the Magistrate rightly exercised his discretion in ordering the custody of the buses to be handed over to the owners.

(6) In the result, the revision petition stands dismissed.

N.K.S.

REVISIONAL CIVIL

Before H. R. Sodhi, J.

MOHINDER SINGH, ETC.,—*Petitioners.*

versus

NANAK SINGH, ETC.,—*Respondents*

Civil Revision No. 506 of 1970.

November 11, 1970.

Code of Civil Procedure (V of 1908)—Sections 64 and 115 Order 21, rules 58, 59, 60, 61 and 63 and Order 38 rule 10—On objection under rule 58, the executing Court allowing conditional release of property under attachment—Revision petition against the order of imposition of condition—Whether maintainable—Judgment-debtor entering into an agreement to sell his property before its attachment in execution of the decree against him—Such contractual obligation—Whether prevails over the attachment.