
Bhagabat Goor Vs Hari Kishore Bhattacharjee

None

Court: Gauhati High Court

Date of Decision: July 12, 1963

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) â€” Section 523, 523(2)

Citation: (1964) CriLJ 256

Hon'ble Judges: T.N.R. Tirumalpad, J.C.

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

T.N.R. Tirumalpad, J.C.

1. This reference has been made regarding the order of the Second Class Magistrate, Dnarmannagar, passed u/s 523(2) Cr. p. C. directing the

bullock seized by the Police to be handed over to the respondent Hari Kishore Bhattacharjee, after holding that he was tiff rightful owner of the

bullock.

2. The case arose as follows:

The respondent Hari Kishore bnattacharjee, gave a report at the Dharmanagar Police Station on 18-5-60 that his bullock of unmixed black color,

lame, thin and with a taw red hairs on the shoulder and having horns 8 or 9 fingers in length was missing since 12-5-60. The police maze a G. D.

entry regarding the same. Hari Kishore Bhattacharjee, again appeared before the Dharmanagar oiice station on 16-3-61 with bullock black in

cooler having a lunar white paten on the fore-head and a mark on the right side of the belly with horns about 8 fingers in length and reported mat it

was his bullock which was missing from by, Dot nap come back on 12-3-61, that he had detained it, but that one Pyan Nath of Radhapur had

come demanding tried Bullocks saying that he had tactful it from the petitioner one Bhagabat Goor of Haltlong. Hari Kishore Bnattacnerjee saia

that on account of this dispute, he was producing the duty in the Police station, fie A.S.I, one M. Roy, thereupon seized the bullock and made a G.

U. entry that he had seized the same as unclaimed property and that he had nanded it over to the Government pound for custody.

3. On 17-3-61, the petitioner Bhagabat Goor filed a petition before the S.D.M., Dnarmanagar, claiming the bun. on 22-3-61, the u/s

Dnarmanagar Police station, sent report to the Magistrate mentioning the circumstances as stated above by me) under which the bull was seized as

unclaimed property and he prayed that action may be taken u/s 523(2) Cr. P.C. for ascertainining the owner. Then the Magistrate registered a

case u/s 523 and held an enquiry after issuing notice to the petitioner and the respondent and he held that the respondent was the right Fiji owner

of the bullock and he directed bullock to be handed over to him.

4. The sessions Judge, in his order of reference has now stated that the Magistrate should not have proceeded u/s 523 Cr.PC as the conditions

necessary for naming an enquiry thereunder did not exist and that the order passed by the Magistrate was, therefore, without jurisdiction. He has

also pointed out that the Magistrate did not take. into account the fact that the description of the ducky given by the respondent on 18-5-60 did

not at all tangy with the description of the bullock produced before that Police on; 16-3-1961 and that the order of the Magistrate holding the

respondent to be the rightful owner of me bullock was clearly wrong.

5. I must say that the entire procedure adopted by tne1 police as well as by the Magistrate has been illegal, in this case. When the respondent

appeared bettor the police Station on 15-3-61 with the said bun in question, the fonts? Officer should not have seized the bull as unclaimed

property. It was not unclaimed property at all. The report to in Police by the respondent was that the bull belonged to turn and he also reported

that one parry Nath was claiming tom bull as belonging to the petitioner Bhagabat Gourmets, the bull Was actually claimed by two parties. Under

such circumstances the Police Ruttier should not have seized the bull as unclaimed property, in such a case, the owners of the bull has to be

decided by a Civil court and the Police Whpcord should not have seized the bull and sent it to the Government pound. Instead, he should have

directed the respondent to take back the bull and have the dispute relating to the bull settled In proper proceedings.

6. Again, when the petitioner moved the criminal court in the matter, the Magistrate had no jurisdiction to start proceedings u/s 523 Cr. P. C

Section b23 comes into play only when the seizure by a Police Officer of property taken u/s 51 Cr.PC or alleged or suspected to have been

stolen, or found under circumstances which create suspicion of the Commission of any offence, is reported to a Magistrate. The report of the

Police utricle dated 22t3-5l to the Magistrate did not disclose that the seizure was under the circumstances contemplated under S. 523. The

learned Magistrate should have therefore directed the Policy to return the property to the person from whom it was seized and he should not have

started an enquiry u/s 523 Cr.PC. What the Magistrate purported to do in the Inquiry was actually to decide the civil dispute"" relating to the bull.

He had no jurisdiction to do so. The entire proceedings u/s 523 taken by the Magistrate were, therefore, illegal.

7. The order of the Magistrate is, therefore, set aside and the proceedings before the Magistrate which were taken without Jurisdiction are

quashed. I find that the bullock has been returned to the respondent by the Magistrate. The bullock was seized from the respondent by the Fulcra

and hence it should be returned to the respondent and fattened? I shall not interfere with that portion of the order. The dispute between the

petitioner and the respondent regarding the ownership of the bullock is a matter which has to be decided in a Civil Court.