

Shyam Lal Sharma Vs Nagengra Nath Dutta & Ors.

Court: Gauhati High Court

Date of Decision: May 23, 1983

Acts Referred: Contract Act, 1872 & Section 170, 170

Citation: (1983) 2 GLR 108

Hon'ble Judges: S.M.Ali, J

Bench: Single Bench

Advocate: K.K.Bhatra, K.Sarma, P.Khataniar, S.Misra, T.C.Khatri, Advocates appearing for Parties

Judgement

Heard learned counsels for both sides. A criminal case was registered by the police under Section 406 IPC on a complaint lodged by petitioner.

The case was registered in the Court of the learned Magistrate as GR Case No. 3526/82 (Dhekiyajuli P.S. Case No. 748/82), In course of the

investigation the investigating Officer seized 3 pairs of C.T.C. rollers from the possession of the accused party and the matter of seizure was

reported to the learned Magistrate. Thereafter "both the parties applied to the learned Magistrate for possession of the seized articles. The learned

Magistrate by his impugned order dated 17.11.82 ordered that the seized articles are to be kept in the court Malkhana for safe custody until

further orders and pending investigation.

It is found that the learned Magistrate while passing the order opined that the matter is purely a civil one in nature. But without sufficient materials in

support of this view, such an opinion should not have been expressed in the manner in which it has been done. The machineries were given to the

accused O. P. for repairing work and after repairing, those were not returned to the complainant owner (petitioner). A repairer is empowered

under Section 170 of the Contract Act to retain the articles repaired by him by way of lien on those articles if the due repairing charges be not paid

to the repairer by the owner of the articles. But it is a matter of investigation as to whether the retention of the machineries by the accused party

was done in its right under Section 170 of the Contract Act. It is submitted on behalf of the petitioner that the complainant petitioner is incurring

heavy loss due to the machineries being out of its possession for a long time. The learned Magistrate while passing the order does not appear to

have considered this aspect of the matter. Learned counsel for the petitioner further submits that the machineries are such as cannot be conveniently

kept in the court Malkhana itself. Learned counsel for the opposite party however argues that no payment against the bill for repair work was

made by the petitioner for which it is the right of the accused to retain the articles. The learned counsel also submits that the bill has already been

submitted to the owner (petitioner) for payment. He also pointed out that the concerned bill registers have been seized by the Police. Learned

Magistrate will examine all those aspects of the matter and then pass an appropriate order. He will consider whether the accused opposite party

has a lien on the property with respect to the repairing works. It his to be noted that no lien arises with respect to any past dues owing to the

repairer. The learned Magistrate will rehear both the parties and consider the matter in the light of the observation made above. The impugned

order is set aside and the petition is disposed of as aforesaid. Send down the records to the Court of the learned Magistrate.