(1960) 01 MP CK 0013

Madhya Pradesh High Court

Case No: None

Lala Har Bhagwandas and Another		APPELLANT
	Vs	
Diwan Chand		RESPONDENT

Date of Decision: Jan. 25, 1960

Acts Referred:

- Penal Code, 1860 (IPC) - Section 379, 454

Citation: (1960) CriLJ 919

Hon'ble Judges: P.K. Tare, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

P.K. Tare, J.
This petition purports to be one u/s 520. of the Criminal Procedure Code. It seeks a reversal of the order, dated 13-6-1959, passed by Shri S. P. Hakim, First Additional Sessions Judge, Jabalpur, in Criminal Revision No. 17 of 1959, arising out of the direction given by Shri H. N. Dubey, Magistrate First class, jabalpur about return of a truck involved in Criminal Case No. 1486 of 1958, dated 10-3-1959.

2. The learned Counsel for the non-applicant urged that u/s 520 of the Criminal Procedure Code, no such application lies, where this Court is not in seisin of an appeal or a revision. The learned Counsel for the applicants urged that Section 520 of the Criminal Procedure Code confers supervisory powers on this Court. The said Section is as follows:

Any Court of appeal, confirmation, reference or revision may direct any order u/s 517, Section 518 or Section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the Former Court, and may modify, alter or annul such order and make any further orders that may be just.

Where an appeal on a reference or a revision or a confirmation proceeding is pending before the High Court or has already been disposed of, an application u/s 520 would, no doubt, lie to this Court. But, where the matter does not come up to the High Court at all, but the judgment of the first Court or the Sessions Court becomes final, would an application under this Section lie to this Court?

3. The learned Counsel for the applicants invited attention to the observations of Shiv Dayal f in Shanta Ram v. State Criminal Revn. No. 6 of 1959. D/-5-2-1959. The learned Judge held that the expression ''Court of appeal'' merely indicates a Court which is the ordinary Court to which an appeal is preferred from orders passed by the trial Court. In the opinion of the learned Judge, it is not a reasonable construction to add the words ''when such Court is hearing or disposing of an appeal from the judgment of conviction or acquittal passed by the trial Court'' after the word ''Revision''. In suport of this construction, the learned Judge relied on Assistant Collector of Customs Central Excise Kandarmngalam v. Krishna Pil''ai AIR 1958 Mad 42. Chcraniilnl v. Jabar Chand. AIR 1953 MP 149 and Walchand Jasraj Marwadi Vs. Hari Anant Joshi, , The learned Judge purported to dissent from the view expressed by Bose J. in AIR 1947 33 (Nagpur) .

4. According to the view expressed by Bose J. (as he then was) the Section is only an empowering Section conferring certain powers on the Court of appeal, confirmation, reference or revision and nothing more. What Bose J. decided was that no appeal lies from an order passed u/s 517 of the Criminal Procedure Code. The learned Judge was not required to decide the question raised in the present case. Therefore, I am of opinion that there is no question of dissenting from the view of Boso J. The question involved was, however, squarely answered by a Division Bench of the Nagpur High Court consisting of Hidayatullah C-J. (as he then was) and Mangalmurty J., upon a reference made by Mudholkar J. in Nandu v. Dhasada 1957 M LJ 67, as follows:

This is a reference by Mudholkar J. referring the following questions for decision by a Division Bench:

(i) ﷺ Whether an appeal lies u/s 520 of the Code of Criminal Procedure against an order passed by a Criminal Court u/s 517 of the Code?

(ii) ﷺIf an appeal does lie, whether in respect of an order u/s 517 made while acquitting an accused person, an appeal would lie to a Court to which it would normally lie from an order of conviction or whether it would lie to the High Court.?

The learned Judges of the Division Bench approving of the view of Bose J. in AIR 1947 33 (Nagpur) answered the reference as follows:

On the whole, we think that the concurrence of opinion on this point is that Section 520 of the Code of Criminal Procedure does not confer a right of appeal but is only an enabling Section creating a supervisory power in Courts of appeal, confirmation,

reference or revision. These Courts can pass the order in the main case, or if no appeal has been filed against the main case, can be moved to pass such order as they think fit in respect of the property involved in the criminal case. It may be pointed out that the subordination of Courts according to the better view is to be taken into account in determining the forum, for the exercise of such supervisory powers. It is not necessary that the Court of appeal must every time be the Court of appeal to which an appeal against the main decision can be taken. Our answer, therefore, to the first question is in the negative. The second question as framed depends upon the first question being answered in the affirmative and need not be answered.

Earlier the learned Judges made the following observations who respect to the question, whether the appellate Court can be moved by way of an original petition:

This power may be exercised by the Courts indicated either during the course of hearing of an appeal, confirmation, reference or revision or the power may also be used even though no appeal confirmation, reference or revision may be pending. In other words, the power granted is a power to control the action of the subordinate Court disposing of the property after the termination of a criminal case. There are no words here conferring a right of appeal on anybody, though the superior Court can be moved to intervene when the order is against, any person. It is not necessary that it should be by way of an appeal; it can be by way of a mare petition.

This Division Bench case was not brought to the notice of Shivdayal J. Had it been done, the reference made by him to the larger Bench would have been unnecessary.

5. Therefore following the Division Bench, I would hold that the appellate Court can be moved by way of an original petition. I may also add that even a revision u/s 435 or 439 of the Code would lie for the purpose. Therefore,, the preliminary objection raised on behalf of the non-applicant is overruled, to conclude that the present petition is tenable.

6. So far as the facts of this case are concerned, the applicants were carrying on business of motor transport in partnership with the non-applicant, Diwanchand. They had executed agreements in favour of each other regarding the truck which was the subject-matter of this dispute. The said agreements were filed in the case as Ex. P. 2 and Ex. P. 3, which provided that the truck shall be in possession of the non-applicant and shall be run by him. But, in case he fails to pay any instalments, the applicant would be entitled to take possession of the truck and to retain it till their money is repaid. As some instalments were of paid the truck was taken possession of by the applicants. It was the non-applicant''s case that the applicants forcibly took away the truck against his consent and thereby committed an offence u/s 379, Indian Penal Code. The applicants'' defence was that the non-applicant handed over the truck to them voluntarily and there was no question of a criminal offence. On these contentions, the trial Magistrate, ultimately, acquitted the

applicants of the offence, with the following observations:

In the above circumstances, I am of the opinion that the accused have not committed any offence u/s 379 of the Indian Penal Code or u/s 4 of the Debtors Act. Therefore. I hold the accused not guilty under any of the Sections as alleged by the prosecution. I. therefore, acquit accused Harbhagwandas son of Ramduttamal and Kadhori Sah son of Lakhim Sah u/s 251-A (ii) of the Criminal Procedure Code.

As regards the truck No. 959 M. P. J., I am only concerned with the possession of the truck. It has been amply proved that this truck has been seized from accused Bhagwandas from his garage. It is clear that the Criminal Courts have got jurisdiction to decide the possession of the property on the date of incident. The ownership and the] title are exclusively the jurisdiction of the Civil Court. As regards the possession there is clear cut evidence that the accused Bhagwanclas has possession over the truck without any mala fide intention. Therefore, I would like to entrust the truck M. P. J. 959 to accused Bhagwandas till the decision of the Civil Court with respect to the rights and the title if any by the aggrieved party.

7. The learned Additional Sessions Judge, in his exhaustive revisional order, came to the conclusion that the truck should be delivered over to the complainant, Diwanchand. The learned Judge considered the legal effect of the agieements (Ex. P. 2 and E. P. 3) between the parties, as also considered the oral evidence with respect to the question as to who was entitled to possession of the truck. The learned Additional Sessions Judge was of opinion that as there were two rulirics of this: Court, namely, Kashiram Vs. Bhagwandas Lallu Kurmi and Another, , decided by Chaturvedi J. and Prakash Chandra Jain Vs. Jagdish and Another, decidpi by Naik J., he could follow any one of the rulings.

8. In my opinion, while deciding the question about the return of the property involved in, the case, the appellate or the revisional Court can certainly come to its conclusions, when it is exercising powers u/s 520, while hearing an appeal, revision, confirmation or reference. But, where no appeal, revision, confirmation or reference comes up for hearing and the matter comes up for consideration by way of an original petition or a revision u/s 435 or 439 of the Criminal Procedure Code, the appellate or the revisional Court cannot question the popriety or the legality of the conviction or the acquittal. Because, in such a case the subject-matter is merely the direction about return of the property and not the conviction or the acquittal. Nor, can this Court go into the question of rights of the parties based on the agreement entered into between the parties. That would be a matter for decision by the Civil Court, where the aggrieved party would have s, right of suit. The scope of the powers exercisable u/s 520 against the direction about the return of the property would be merely to examine the legality or the propriety of the direction and if the appellate or the revisional Court purports to sit in judgment over the conviction or the acquittal, that would be wholly unwarranted. It was against such a wrong course that Kashiram Vs. Bhagwandas Lallu Kurmi and Another, . This was what the learned

Judge observed:

Shri R. S. Dabir learned Counsel for the petitioner, however, contends that this Court has power to set aside the finding so far as an order u/s 517 is concerned. That will, in my opinion, under the special circumstances of this case, virtually amount to laying down that the learned Magistrate''s finding of fact was wrong, or, in other words, that the property said to be stolen belonged to the complainant and was, in fact, stolen by the accused-non-applicant No. 1 from his house.

Chaturvedi J. followed the dictum laid down by their Lordships of the Supreme Court in Pushkar Singh Vs. State of Madhya Bharat and Another, , which lays down that when an accused is acquitted and no offence with respect to the property is committed the Court would have no jurisdiction to return the property to the complainant. But, where an offence with respect to the property is committed, but the accused cannot be punished, as the prosecution fails to establish its case beyond reasonable doubt a different principle would apply.

9. The learned Additional Sessions Judge, however failed to note the distinction between the said ease decided by Chaturvedi J. and the other case decided by Naik J. In Kashiram Vs. Bhagwandas Lallu Kurmi and Another, decided by Chaturvedi J., the accused had been prosecuted for an. offence u/s 454, Indian Penal Code. They were acquitted of the offence and, it did not appear that any offence with respect to the property was committed; and, therefore, the property that was said to be stolen property was directed to be returned to the accused. However, Chaturvedi J., exercising inherent powers u/s 561-A of the Criminal Procedure Code, gave a direction that the property be detained for a period of 45 days to enable the complainant to file a civil suit in the Civil Court. Chaturvedi J., agreed with the view of Bose J. in- AIR 1947 33 (Nagpur) .

10. The case decided by Naik J. in Prakash Chandra Jain Vs. Jagdish and Another, was of a different type, wherein there was material on record to show that the accused was not at all entitled to the property in question, although for the purpose of his guilt, he had been given benefit of doubt. In that case there was a confession made by the accused, which, however, was not admissible for the purpose of finding him guilty, but, which was admissible for the purpose of determining as to who was the best person entitled to the return of the property. In view of the confession of the accused, the learned Judge held that the complainant was entitled to return of the property. He relied on Rani Sona v. Rao Sobhasingh (1936) 19 Nag LJ 264 and AIR 1949 17 (Nagpur) , the latter being decided by Hemeon J.

The cases before Hemeon J. and Naik J. were of the type, wherein the accused was acquitted by giving the benefit of doubt. Therefore, although the guilt of the accused was not established beyond all reasonable doubt, yet the property involved was never the property of the accused and at no time had the accused lawful possession of the property involved. Therefore, the only proper course to be

followed in that type of eases, would be to order the property to be returned to the complainant. If that were not done, the Court would be making a gift of A''s property to B for nOi reason, whatsoever. Therefore, I am in entire agreement with the view expressed by Hemeon J-and Naik J. which would be applicable to that type of cases.

11. The present case, in my opinion, pertains to a third type, where the question of possession, is disputable and the rights of the parties to possession have to be decided on the basis of the agreements between the parties. That would be a matter for decision by a Civil Court. In a criminal case, what tho criminal Court has to see is the prima facie right to possession at the time of the incident and not to adjudicate upon the civil rights of the parties. Prima facie, the accused-applicants were in possession of the truck at the time when it was seized. It may be that they may be entitled to its possession under the agreements or they might have taken wrongful possession. But, in my opinion, the learned Additional Sessions Judge could not go behind the judgment of acquittal of the trial Court in the manner that he has done. For the purpose of the revision, the. Additional Scissions Judge ought to have seen that the judgment of acquittal was final and the finding in that behalf could not be open to a challenge) before him.

As such, I am of opinion that the learned Judge did not apply the proper principle applicable to a case of the present type. The learned Judge failed to see that the principles laid down by Chaturvedi J. and Naik J. are anplicablu to different types of cases. Therefore, there was no question of tine learned Additional Sessions Judge choosing to follow any one of tlie said views. In fact, there is no conflict between the view of Ohifturvedi J. and Naik J. I am in entire agreement with both the views of the learned Judges. But, in my opinion, the present case would be governed by the principle indicated by Chaturvedi J. As such, I am of opinion that the learned Additional Sessions Judge was in error in reopening the finding of acquittal given by the trial Magistrate and in purporting to follow the view of this Court on the assumption that there was a conflict between the views of Chaturvedi T, and Naik J. To conclude, I am of opinion that the direction given by the learned Additional Sessions Judge was incorrect while that given by the trial Magistrate was correct.

12. However, I am informed that the truck has already been handed over to the non-applicant and that the applicants have filed a civil suit for the enforcement of their rights. The scope of the powers exercisable Under Sections 517 and 520 is only summary, which does not adjudicate upon the civil rights of the parties. Therefore, when the aggrieved party has already resorted to a civil remedy, the present revision becomes infructuous. For this reason I decline to interfere with the order of the learned Additional Sessions Judge, although, art my opinion, it may be incorrect. It is open to the applicants to seek adjudication of their rights in the civil suit that is pending. Therefore, would dismiss this revision and leave the parties to seek an adjudication of their rights in the suit that is pending, as was the course followed by Chaturvedi J. in Kashiram Vs. Bhagwandas Lallu Kurmi and Another, .

13. As a result, this petition fails and is dismissed.