

(2009) 09 MAD CK 0234

Madras High Court

Case No: Criminal Appeal No. 909 of 2003

Mani

APPELLANT

Vs

State by Inspector of Police

RESPONDENT

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**Date of Decision:** Sept. 14, 2009**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 452(2), 452(4), 454
- Penal Code, 1860 (IPC) - Section 323, 324, 379, 447
- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 - Section 3

**Hon'ble Judges:** P.R. Shivakumar, J**Bench:** Single Bench**Advocate:** M.V. Muralidharan, for the Appellant; R. Muniapparaj, Government Advocate (Crl. Side), for the Respondent**Final Decision:** Dismissed

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**Judgement**

P.R. Shivakumar, J.

This is an appeal preferred against the order of the trial court dated 18.04.2002 made in S.C. No. 176/2001. The appellant herein was examined as P.W.1 in the trial court. Thangarasu, Uthirasamy, Kandasamy and Natraj were prosecuted before the trial court, namely the court of Principal Sessions Judge, Erode in the said sessions case for offences punishable u/s 447 IPC, Section 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Sections 324, 323 and 379 IPC. The trial ended in acquittal of Uthirasamy (A2) and Natraj (A4) and conviction of Thangarasu (A1) and Kandasamy (A3) for offences punishable u/s 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and offences punishable under Sections 447, 323 and 379 IPC. One of the offences for which the said persons were convicted was an offence of theft, an offence punishable u/s 379 IPC. A tractor bearing Regn. No. TN-36 C-8142 marked as M.O.1 is the alleged stolen property. The learned Sessions Judge, in his judgment has

incorporated a property order directing the return of the said tractor to P.W.1 after the expiry of the appeal time would be over. P.W.1 waited till the appeal time was over and thereafter filed a petition Crl.M.P. No. 1746 of 2002 seeking an order directing the return of the said tractor to him. The learned Principal Sessions Judge dismissed the said petition holding that the property could not be returned to P.W.1 as an appeal preferred by the convicted persons was pending. Aggrieved by the said order the appellant herein who was examined as P.W.1 before the trial court has preferred this appeal on various grounds set out in the appeal petition.

2. Though it has not been clearly stated in the petition, this appeal seems to have been entertained u/s 454 Cr.P.C. A Mahindra tractor bearing Regn. No. TN-36 C-8142 which is said to have been stolen by the accused persons as per the prosecution case, was recovered during investigation of the case under Ex.P3-Mahazar produced in the court during trial and marked as M.O.1. At the conclusion of trial, the trial court, in line with its finding that the appellants herein/accused were guilty of not only an offence punishable u/s 3(i)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 but also an offence punishable u/s 379 IPC, came to the conclusion that P.W.1 (the appellant herein) was the person entitled to the possession of the said property and hence incorporated an order in the judgment directing the return of the tractor to P.W.1 (appellant herein) after the appeal time would be over.

3. Even though the order was silent about what could be done if appeal is filed within the period allowed for filing an appeal, Section 452(4) of Cr.P.C makes it clear that except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of Sub-section (2) an order for the return of the property shall not be carried out for two months, or when an appeal is presented, until such appeal is disposed of. Under such circumstances, pending disposal of the appeal, namely Crl.A. No. 734 of 2020 preferred by the accused 1 and 3 who were convicted by the trial court, P.W.1 (appellant herein) preferred a petition in C.M.P. No. 1746 of 2002 on the file of the trial court to return the property, namely tractor bearing Regn. No. TN-36 C-8142 marked as M.O.1 in S.C. No. 176 of 2001 on the file of the trial court. In fact, the said petition was not for an adjudication as to who was entitled to get possession of the property. On the other hand, the said petition was filed for the purpose of giving effect to the property order incorporated in the judgment of the trial court. The trial court relying on Sub-clause (4) of Section 452 has rightly held that the property should not be returned to P.W.1 as the appeal against conviction preferred by the accused persons were pending as on the date of disposal of the above said criminal Miscellaneous Petition. Of course, Sub-clause (2) of Section 452 enables a court to hand over possession of the property produced in a criminal trial to a person claiming to be entitled to possession therefore provided he executes a bond engaging to restore such property to the court, if the order made by the court and incorporated in the said judgment is modified or set aside on appeal or revision. In the petition filed

before the trial court, P.W.1 (appellant herein) has not prayed for such interim custody pending disposal of the appeal. On the other hand, he seems to have coined the prayer for entrustment of the custody of the vehicle absolutely without any condition. Therefore, the learned Sessions Judge (trial judge) is perfectly justified in dismissing the said petition holding that the question will be decided by this court in the appeal preferred by the convicted persons.

4. The appeal preferred by the convicted persons (A1 and A3) is being disposed of today itself. As the correctness of the property order incorporated in the judgment of the trial court shall be dealt with in the appeal, namely CrI.A. No. 734 of 2002, this court is of the considered view that no separate order regarding disposal of the property need be passed in this appeal and it shall be sufficient to hold that the order of the trial court refusing to give effect to the property order incorporated in the judgment of the trial court till the disposal of the appeal is perfectly in order.

5. Accordingly, this appeal preferred by P.W.1 against the order dated 18.04.2002 made in S.C. No. 176 of 2001 u/s 454 Cr.P.C fails and the same deserves to be dismissed. Accordingly, this appeal is dismissed.