
(2013) 05 CAL CK 0002

Calcutta High Court

Case No: C.R.R. No. 1101 of 2013

R.T.O. Carriers Pvt. Ltd.

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision: May 14, 2013

Citation: (2014) 3 RCR(Criminal) 183

Hon'ble Judges: Tarun Kumar Gupta, J

Bench: Single Bench

Judgement

Tarun Kumar Gupta, J.

This is an application u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter to be referred as the Act of 73) for setting aside the judgement and order dated 18th May, 2013 passed by learned Chief Judge, City Sessions Court, Calcutta in Criminal Revision No. 25 of 2013 affirming the order dated 22nd of February, 2013 passed by learned Additional Chief Metropolitan Magistrate, Calcutta in connection with Section C Part-II Case No. 5 dated 07.11.2012 u/s 41 of the Act of 73 read with Section 379 of the Indian Penal Code, 1860. It is the case of the petitioner that the petitioner, R.T.O. Carriers Pvt. Ltd. is a transport company. In terms of an agreement dated 22nd of June, 2012 entered into by and between the petitioner company and O.P. No. 2 Amgoori India (P) Ltd., the petitioner was booked for transporting one consignment of 666 packages of tea from the garden of O.P. No. 2 situated at Shibsagar, Assam. The petitioner company hired a truck bearing No. NL05 D9921 for transporting said consignment for delivery at Kolkata. Said truck was expected to arrive at Kolkata with loaded tea on or before 14th August, 2012, but said truck did not reach the destination. On the basis of a complaint filed by the petitioner company Jorhat Police Station Case 827 of 2012 dated 31.08.2012 was registered u/s 379 of the Indian Penal Code. On 7th of November, 2012 Burtolla Police Station case No. 5 of 07.11.2012 was registered for investigation when one truck bearing No. WB25 B4189 loaded with 396 bags of tea were detained with some persons without any valid paper. The matter was brought to the notice of learned ACMM, Calcutta. One S.I. Chittaranjan Das of Jorhat P. S., Assam appeared in the Court and wanted to

take custody of those tea bags being subject matter of pending Jorhat P.S. case No. 827 of 2012 dated 31.08.2012. As per direction of learned ACMM a report was submitted by the I.O. of Burtolla P.S. that out of 396 tea bags seized with marks of identity 69 bags were badly damaged and that the owner tea company i.e., Amgoori India (P) Ltd. did not care to come and identify the seized articles. However, I.O. of Jorhat P.S. was asked to come and collect the goods but without any result. There was a prayer from the side of the I.O. of Burtolla P.S. to the learned ACMM for auction of said seized tea and to deposit the sale proceeds in Court. In the meantime the present petitioner appeared before the Court of learned ACMM and claimed for return of those seized tea bags as carrier of the same. Learned ACMM, Calcutta, however, refused said prayer for return and directed the seized articles to be sold by public auction by the Tea Board, Kolkata as per law under the supervision of an officer not below the rank of Assistant Commissioner vide order dated 22nd of February 2013. The petitioner company being aggrieved filed a revision being Criminal Revision No. 25 of 2013 in the Court of learned Chief Judge, City Sessions Court, Calcutta. However, learned Chief Judge, City Sessions Court, Calcutta was pleased to dismiss the same by affirming the aforesaid order of ACMM. Hence is this application u/s 482 of the Code of Criminal Procedure.

2. Learned counsel for the petitioner company submits that both the courts failed to take note that in terms of an agreement as well as on the strength of a valid consignment note the petitioner Carrier Company was transporting 666 bags of tea of O.P. No. 2 Tea Company when the theft was committed and that subsequently recovered 396 bags of tea were part of said stolen consignment. He further submits that the petitioner company being the transporter had every right to claim the custody of said 396 bags of tea being subject matter of the Burtolla P.S. case No. 5 dated 07.11.2012. According to him, both the courts below failed to conceive that the petitioner company being the transporter was in-charge of those tea bags and hence had the authority to take back the recovered tea bags from the police for consigning the same to its destination at Kolkata. He further submits that at the time of delivery of seized goods u/s 457 of the Code of 1973 the court should consider whether the claimant is entitled to possession thereof or not and not the ownership of the same. According to him, when there is no objection from the side of the O.P. No. 2 owner company regarding return of the seized tea bags to the petitioner company being the transporter then learned courts below should not have refused its prayer for return of those articles.

3. Learned counsel for the State, on the other hand, submits that learned courts below rightly refused the prayer for return of those tea bags to the petitioner company. According to him, the petitioner company was not the lawful owner of the same. Admittedly, O.P. No. 2 Company, he submits, was the lawful owner of said tea bags. He next submits that when neither the lawful owner of the tea bags nor the I.O. of the Jorhat P.S. ultimately came forward to take charge of those seized tea bags then learned courts were justified to direct auction of the same for keeping the

sale proceeds for the rightful owner. During hearing he further submits that in terms of the order of learned ACMM Tea Board was approached by the I.O. for auction of those seized tea bags and that Tea Board informed the I.O. that Kolkata tea traders association is involved in the matter of auction of tea at Kolkata and the representatives of said association inspected those tea bags and were of the opinion that said tea cannot be auctioned as the quality of those tea contained in the seized bags cannot be guaranteed.

4. I have considered respective submissions of learned counsels of the parties in the backdrop of the peculiar facts of the case. There is no denial that O.P. No. 2 Amgoori India (P) Ltd. was the owner of those tea bags and that the petitioner company was entrusted for carrying those tea bags from the tea garden to Kolkata.

5. Section 457 of the Code of Criminal Procedure runs as follows:-

Procedure by police upon seizure of property.-

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

6. On plain reading of Section 457(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to be Code of 1973) it is clear that whenever the seizure of the property by any police officer is reported to the Magistrate and said property is not subject matter of any criminal proceeding then the Magistrate is entitled to make appropriate order for disposal of such property or delivery of such property to the person entitled to the possession thereof. Admittedly, in spite of sending of notice the owner of said tea bags (O.P. No. 2) did not come forward to take custody of those tea bags. Again, the I.O. of Jorhat Police station case where the complaint of theft of tea bags was lodged resulting starting of a specific case also did not come forward to take charge of those seized tea bags. The present petitioner being carrier of said tea bags under proper authority was acting rather as an agent of the owner (O.P. No. 2) during transit of those tea bags from the tea garden to Kolkata address. In the absence of any objection from the side of the original owner Amgoori India (P) Ltd. (O.P. No. 2) the present petitioner being carrier of the same with lawful papers was entitled to claim possession of the same. Learned Magistrate should

have released those recovered tea bags to the custody of the present petitioner Carrier under proper receipts as well as under proper conditions.

7. However, during hearing it came out that learned Magistrate directed the Tea Board to auction those seized tea bags and to deposit the sale proceeds. It further appears that Tea Board not being the authority of auction of tea at Kolkata referred the matter to the Kolkata tea traders association who usually deal with the work of auction of tea at Kolkata. It appears that said agency declined to take charge of said tea bags for auction in Kolkata market in view of deterioration of its quality. Admittedly, tea was meant for human consumption. If the product during lapse of time and for absence of proper arrangement for its safe keep, is found to be unfit for human consumption then the same cannot be returned even to its owner. In view of the discussions made above the impugned judgment and order dated 18th of May, 2013 passed by learned Chief Judge, City Sessions Court, Calcutta in Criminal Revision No. 25 of 2013 affirming the order dated 22.02.2013 passed by learned ACMM, Kolkata in connection with Section C Part - II case No. 5 dated 07.11.2012 u/s 41 of the Code of 1973 read with Section 379 of the Indian Penal Code, 1860 rejecting the application u/s 457 of the Code of 1973 is hereby set aside with the following directions. Learned ACMM, Kolkata is hereby directed to take steps for ascertaining from the proper authority as to whether the seized tea are still fit for human consumption or not. It may be that those are still fit for human consumption though are not maintaining high standard for being auctioned in the tea market. If the report is found to be in the affirmative then learned Lower Court should return those articles to the petitioner as per rule. However, if the report is found to be in the negative then learned Magistrate should take necessary steps for destruction of the articles as per rule and to give certificate of destruction to the petitioner Carrier for taking up the matter with the owner transporter. It would be highly appreciated if the entire process is completed within four weeks from the date of communication of the order.

The application stands disposed of accordingly.

Urgent photostat certified copy of this order be supplied to learned counsels of the parties, if applied for.