Lakshmichand Rajmal Vs Gopikisan Balmukund

Court: Bombay High Court

Date of Decision: Nov. 8, 1935

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€" Section 517

Citation: AIR 1936 Bom 171 : (1936) 38 BOMLR 117

Hon'ble Judges: Macklin, J; John Beaumont, J

Bench: Division Bench

Judgement

John Beaumont, Kt., C.J.
In this case certain property was stolen from the complainant on January 3, 1934, and it was found in

possession of the present applicant on the next day. The police seized the property, and charged the applicant and his brother with stealing it. But

on January 22 the police made an application to the Magistrate that he should discharge the accused as there was no sufficient evidence to place

them on a charge-sheet. The police were of course well aware of the presumption that arises u/s 114 of the Indian Evidence Act that a man in

possession of property shown to have been stolen soon after the theft is presumed either to have stolen it or to know that it had been stolen, and

when the police applied for the discharge of the accused, it must have been because they were satisfied that that presumption could be rebutted.

After the discharge of the accused, the question arose as to what was to be done with the property which the police had seized. Apparently this

Court by an order made on October 4, 1934, directed the Magistrate to take action u/s 523 issuing a proclamation, specifying the articles in

Court, and requiring any person who might have a claim thereto to appear before him and establish his claim. The Magistrate adopted that course,

and the only claimants were the complainant and the present applicant. The Magistrate then held an inquiry, and he came to the conclusion that the

complainant was entitled to the property. In so doing he relied on the presumption arising u/s 114 of the Indian Evidence Act that the applicant

must have known that the property was stolen. It seems to me manifestly unfair to rely on that presumption against the applicant when the

Magistrate had himself discharged the accused in respect of any offence in connection with this property.

2. u/s 523 what the Magistrate has to consider is, who is entitled to the possession of property which has been seized by the police. Where it is

proved that the person from whose possession the" property was seized came by it dishonestly, the Magistrate may have to consider questions of

title in order to determine the best right to possession. But where it appears that the police have seized property from a person who is not shown to

have committed any .offence in relation to that property, then in my opinion the Magistrate can only hold that that person is entitled to possession

of the property. That is the rule which prevails in Madras (see Karuppanan v. Guruswami I.L.R.(1933) Mad. 654 and in Calcutta (see Sattar Ali

v. Afzal Mahomed ILR (1926) Cal. 283) and this Court recently held that the same rule applies to a case arising u/s 517: vide Dhanmall Chellaram

v. Kasturchand Krishnaji 1. If the complainant considers that the applicant has no title to the property, he has a remedy in a civil Court, but the

burden will be upon him to prove his title. If, however, the property is handed over to the complainant, the burden would be upon the applicant to

prove his title in a civil Court. I can see no reason why the burden of proof in a civil suit should be affected by the seizure by the police of property

in relation to which no offence is proved.

3. Application allowed and property directed to be returned to the petitioner.

Macklin, J.

4. I agree.

1(1935) Cr. Rev. App. No. 65 of 1935, decided by Beaumont C.J. and N.J. Wadia J., on August 2, 1935 (Unrep.)

The judgment runs as follows:-

Beaumont, C.J.

The judgment runs as follows :- Beaumont C. J. This is an application in revision against an order of the Presidency Magistrate, 3rd Court, dealing

with the rights to possession of a ring produced before him in criminal proceedings, u/s 517 of the Criminal Procedure Code. The relevant facts are

that the ring in question was handed over to a man named Gandhi on terms, in effect, of sale or return. The actual terms were set out in paragraph

2 of the memorandum, and within the time during which Gandhi was entitled to retain the ring he dishonestly pledged it to a Marwari. Gandhi was

subsequently prosecuted and convicted, and in the course of the case the ring was produced in Court by the Marwari, and at the conclusion of the

case the learned Magistrate made the. order complained of, u/s 517, returning the ring to the Marwari. The learned Magistrate made that order on

the ground that he thought that under the Indian Sale of Goods Act the property in the ring had passed to Gandhi, and therefore the Marwari had a

good title. I think the conclusion at which the learned Magistrate arrived was right, but his method of reaching that conclusion was wrong. u/s 517

the Court dealing with property which has been produced before it in the course of an inquiry or trial may make such order as it thinks fit, amongst

other things, for the delivery to any person claiming to be entitled to possession thereof. What the Court has to consider is who is entitled to

possession, and the Court has not to consider, and is not competent to consider, who has a good title in the property. No doubt it may sometimes

happen, in order to decide who has the best right to possession, that the Court has to consider prima facie questions of title. If property is

produced by somebody who has come by it dishonestly, the Magistrate may not be prepared to return it to him, and may have to consider who

has the best right to possession, and for that purpose, to go to some extent into questions of title. But here the ring was produced by the Marwari,

who was not shown to have come by it dishonestly, and I think that the proper order for the Magistrate to have made u/s 517, exercising his

discretion judicially, was to direct that the ring should be handed back to the man who produced it. That order is, of course, without prejudice to

any question of the true title to the ring. There may be a question of title to be determined in a civil Court between the original vendor and the

pledgee, but that question the Magistrate is not competent to decide with finality. It is argued by the applicant here that the learned Magistrate

arrived at a wrong conclusion in thinking that the title to the ring was in the pledgee, and that he ought to have held that it was in the vendor. Now if

this Court went into that question and arrived at the conclusion that the Magistrate was wrong, and the true title was in the vendor, it still would not

determine the matter between the parties, because the only Court which is competent to do that is a civil Court, and we should merely embarrass a

civil Court before whom that question might come by expressing an opinion upon it. In my opinion, the learned Magistrate made the right order in

returning the ring to the Marwari, but he ought not to have gone into questions of civil law as to the title. I express no opinion whatever as to

whether the conclusion which he arrived at on the question of civil law was right or wrong. We merely dismiss the application, because the result of

the order is right.

N.J. Wadia J.

I agree.