

Before D. S. Tewatia, J.

SARWAN SINGH AND OTHERS,—*Petitioners.*

versus

STATE AND OTHERS,—*Respondents.*

Criminal Revision No. 3-R of 1979.

May 31, 1984.

Code of Criminal Procedure (V of 1898)—Section 523—Currency notes and other moveable property suspected to be smuggled seized by police—Case under Foreign Exchange Regulation Act registered—Several persons staking their claim to the cash amount during the trial of the case—Trial Magistrate handing over the cash to Custom authorities without recording evidence of the claimants—Recording of evidence—Whether necessary.

Held, that when an order under section 523 of the Code of Criminal Procedure, 1898 is to be passed, the fact as to whether the property is case property or not cannot be lost sight of. In a cases where the property continues to be case property, the claim based on mere possessory right of a given claimant would not be of much avail since in the event of the given offences being established, the Customs authorities would be entitled to confiscate the cash amount. If the accused is convicted and an order for confiscation of the said property is made and in the meantime the Court had delivered the possession of the cash to the accused, the court would be put to inconvenience in getting back the amount from the accused which the accused in the meantime may not be in possession thereof, and other complications may also arise. It would, therefore, be prudent on the part of the Court to keep the given property in the custody of the authority which after final adjudication is to pass the final order regarding its disposal in the light of its ultimate decision. The Court may even allow the cash in its own custody, either in treasury or in Bank or if it is any other property then in the custody of the Court or on sapurdari if it is a perishable thing. There is no inflexible rule that in all cases the Magistrate must receive evidence on the record even when it is not required. Where the property is not a case property, the person from whose possession the said property is taken is entitled to the possession thereof unless any other person establishes his superior claim thereto on the strength of the ownership right or any other form of

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superior right as compared to the right of mere possession of the person from whom the said property had been taken into possession by the police. In such a case, obviously, the Magistrate in the interest of justice and fair play shall have to permit the claimants to adduce full evidence and it is only then that he would make an order regarding the disposal of said property.

(Paras 9, 10 and 11)

Criminal Revision Petition recommended to the High Court by Shri Jai Singh Sekhon, Additional Sessions Judge, Jullundur, dated 18th April, 1973, under provisions of section 438 Cr. P. C. for setting aside the order of the learned Magistrate Shri Darshan Singh Chhina, Judicial Magistrate 1st Class, Phillaur, dated 3rd September, 1970, and directing him to proceed under section 523 Cr. P. C. after making due enquiry and giving to the parties concerned proper notice and the time to establish their respective claims.

H. L. Sibal and M. R. Agnihotri, Sr. Advocate S. C. Sibal and Deepak Agnihotri, Advocate with them, for the Petitioners.

H. S. Riar, D. A. G., Punjab for No. 1.

H. S. Brar and P. S. Teji, Advocate for No. 2.

Ashok Bhan, Senior Advocate A. K. Mittal, Advocate with him, for No. 3.

JUDGMENT

D. S. Tewatia, J.

(1) The Additional District Judge, Jullundur,—*vide* his order dated 18th April, 1973 has recommended the setting aside of the order dated 3rd October, 1970 of the Judicial Magistrate First Class, Phillaur who acting under section 523 of the Code of Criminal Procedure, 1898, hereinafter referred to as the 'old Code' delivered to the Superintendent, Customs Department, Amritsar, a car, currency notes of Rs. 4,18,000 in the denomination of Rs. 100 Rs. 10 and Rs. 5, and 13 sovereigns of gold (British currency) for adjudication under the Customs Act, 1962.

(2) In order to appreciate the recommendation of the Additional District Judge and the correctness or otherwise of the order of the trial Magistrate, a reference to material facts would be necessary which can be stated thus : On 14th February, 1970, M. M. P. L.

Balwant Singh who was then patrolling the G. T. Road, at about 3 p.m. received secret information to the effect that some smugglers coming from Ludhiana in a green car were carrying arms and lakhs of money for the purpose of distributing the same to the relatives of such persons who had gone to foreign countries. When the said car came within sight, it was got stopped despite an effort on the part of the driver to escape interception. The occupant of the front seat, namely, Bodh Raj son of Khushi Ram Arora, Mohalla Telian, Bhatinda, tried to run away but was apprehended by the constable accompanying M. M. P. I. Balwant Singh. Two persons were sitting on the back seat of the said car, namely, Ram Labhaya son of Gopal Dass, resident of Amritsar City, and Sarwan Singh son of Munshi Singh, resident of Bhatinda City. On a search of their persons, a key was recovered from the person of Ram Labhaya with which the suit case lying underneath the legs of Ram Labhaya and Sarwan Singh was opened in the presence of Kishan Chand advocate and one Piara Singh son of Rattan, Mahli Gate, Phagwara, who had arrived on the spot in the meantime. In the suit case were found lying currency notes of Rs. 4,18,000 in the denomination of Rs. 100, Rs. 10 and Rs. 5 and a 32 bore pistol, loaded with bullets, besides eight bullets in a belt. On interrogation and further search of the person of Bodh Raj, 13 sovereigns of gold (British currency) lying in a cigarette box were recovered. The accused are said to have disclosed that they had their agents in other countries and were going to distribute the currency notes at Phagwara to the persons whose relations were in foreign countries and who used to send money by illegal means. The police took into possession the currency notes, revolver, the belt of bullets and the key, besides the coat of Bodh Raj, cigarette box and the gold sovereigns. The car in question, Ambassador make No. RJQ-6022, was also taken into possession by the police. It was also said to have been mentioned by the accused in their statements that currency notes mentioned above were in lieu of the money or gold imported from foreign countries by illegal means and that the gold sovereigns were also imported by illegal means. The police then got registered cases under sections 420, 411, 414 and 120 (B), Indian Penal Code, section 27 of the Arms Act, sections 4, 5 and 8 of the Foreign Exchange Regulations Act, 1947, and section 110 of the Customs Act, 1962.

(3) The police made recommendation for withdrawing all the criminal cases regarding the seized property, excepting the case

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registered under section 27 of the Arms Act. Hence, so far as the cash amount and gold sovereigns are concerned, the cases that survived against the accused were under sections 4, 5 and 8 of the Foreign Exchange Regulations Act and section 110 of the Customs Act.

(4) The controversy revolves round the handing over of cash amount to the Customs authorities by the trial Magistrate. The person who stakes the claim to its possession is a firm known as Messrs Prehlad Kumar Sarwan Singh through Sarwan Singh (accused). Before the trial Magistrate, many others had staked their claim to the possession of the said cash amount—they being the Income Tax Officer of Amritsar, Shri Kanwarjit Singh ; the Income Tax Officer of Jullundur, Shri Arjan Singh ; the Income Tax Officer of Bhatinda, Shri V. P. Sud ; and the Superintendent, Customs Department, Amritsar, Shri M. M. Manchanda.

(5) The trial Magistrate allowed the claim of the Superintendent, Customs Department, Amritsar, Shri M. M. Manchanda, while disallowing claim of other claimants, including one of the petitioners in this Court—the firm Prehlad Kumar Sarwan Singh.

(6) The order of the trial Magistrate has been impugned on the ground that he had passed it without giving an opportunity to the respective claimants to adduce evidence and cross-examine the witnesses that may have been examined by other claimants. Support for this view was sought from a Single Bench decision of this Court in *Ram Chander v. State of Haryana and others* (1).

(7) The argument found favour with the Additional District Judge, who has recommended the same for acceptance.

(8) Relevant provisions of section 523 of the old Code are in the following terms :

“523 (i) The seizure by any police officer of property taken under section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person

(1) Cr. R. 592/71 decided on 10th November, 1972.

entitled to the possession thereof, or, if such person can not 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.** If such a 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."**

A perusal of the aforesaid provisions would show that the Legislature has given wide discretion to the Magistrate for the disposal of the property or document seized by the police under section 51 of the old Act.

(9) There is no dispute with the proposition that, in the interest of justice and fairplay, if need be, the Magistrate shall give full opportunity to the claimants to establish their claim to the possession of the property in question by adducing evidence. When an order under section 523 of the old Code is to be passed the fact as to whether the property continues to be the case property or stands freed from any such taint cannot be lost sight of. In a case where the property does no longer remain a case property, then the person from whose possession the said property is taken is entitled to the possession thereof unless any other person establishes his superior claim thereto on the strength of the ownership right or any other form of superior right as compared to the right of mere possession of the person from whom the said property had been taken into possession by the police. In such a case, obviously, the Magistrate shall have to permit the claimants to adduce full evidence and only then he would make an order regarding the disposal of the said property. Whereas, if the property continues to be the case property, then the claim based on mere possessory right of a given claimant would not be of much avail and would not come into play". For if, ultimately the accused is convicted and an order for confiscation of the said property is made and in the meantime the Court had delivered the possession of the cash to the accused, the Court would be put to

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inconvenience in getting back the amount from the accused which the accused in the meantime may not be in possession thereof, and other complications may also arise. In such circumstances, the Court may allow the cash in its own custody, either in treasury or in bank, if it is cash amount, or if it is any other property, then in the custody of the Court or on Superdari if it is a perishable thing.

(10) In the present case, the cash amount and the sovereigns continued to be the case property, in that the Customs authorities shall have to find out as to whether the cash amount and the sovereigns had been acquired in violation of the relevant provisions of the Foreign Exchange Regulations Act and the Customs Act and were going to be used again in violation of the relevant provisions of the said Acts. In the event of the given offences being established, the Customs authorities would be entitled to confiscate the cash amount and the sovereigns. In such a case, it would be prudent on the part of the Court to keep the given property in the custody of the authority which, after final adjudication, is to pass the final order regarding its disposal in the light of its ultimate decision. This is precisely what the Magistrate in the present case has done. His order is recommended to be set aside on the technical ground that such an order should have been passed after receiving evidence of the claimants on the record and support is sought from the Single Bench decision of this Court in *Ram Chander's case* (supra).

(11) The learned Single Judge does not lay down an inflexible rule that in all cases the Magistrate must receive evidence on the record even when it not required. In that case, the learned Judge was impressed by two facts (1) that the Magistrate had passed a cryptic order, and (2) that he had passed that order under the influence of the police which that recommended the handing over of the property in that case to a given person.

(12) In the present case, the Magistrate had passed a very detailed and reasoned order, has given cogent reasons for declining the claim of the Income Tax Officers of various places, as also that of the claimant-petitioner, which is said to be a firm allegedly registered only 10 days before the date on which secret information had been received and the property in question had

been seized by the police. In the present case, it is not disputed that the cash amount and the sovereigns were recovered from the persons that are mentioned in the order of the Magistrate. The circumstances in which the given property was taken into possession are also not in dispute. What is in dispute is as to whether the given property had been acquired as a result of the violation of section 110 of the Customs Act or was going to be used in violation of sections 4, 5 and 8 of the Foreign Exchange Regulations Act. That is a matter which the Customs authorities is to adjudicate upon and, as already observed, in the light of the undisputed facts, the appropriate order regarding the disposal of the property in question was the one that the Magistrate has passed, that is, of handing over the cash and the sovereigns and a car to the Superintendent of the Customs Department, who would, after adjudication, make a final order regarding its disposal.

(13) The ratio of the Supreme Court decision in *Gian Chand and others v. State of Punjab*, (2) would not enter into consideration while making an order under section 523 of the old Code. That decision is relevant at the stage of adjudication regarding the placing of the burden of proof.

(14) In my opinion, the ratio of the Calcutta High Court decision in *Deputy Supdt. Customs, Preventive, West Bengal v. Sitaram Havsaria and another*, (3) is squarely attracted to the facts of the present case.

(15) For the reasons aforementioned, I decline the recommendation and dismiss the revision petition and sustain the order of the Magistrate dated 3rd October, 1970.

N. K. S.

(2) A.I.R. 1962 S.C. 496.

(3) A.I.R. 1968 Cal 274.