

**In Re: Khima Rukhad**

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**Court :** Mumbai

**Decided On :** Feb-22-1918

**Reported in :** AIR1918Bom186; (1918)20BOMLR395; 45Ind.Cas.501

**Judge :** Shah and ;Marten, JJ.

**Appeal No. :** Criminal Application for Revision No. 404 of 1917

**Appellant :** In Re: Khima Rukhad

**Judgement :**

**Shah, J.**

1. In this case the accused were charged with the theft of certain cattle. The First Class Magistrate, who tried the accused, acquitted them and directed the cattle to be given to the accused No. 1, Khima Rukhad. The complainant applied to the Sessions Court at Ahmedabad as regards the order relating to the disposal of the property. The learned Sessions Judge modified the order of the trial Court and directed that the cattle be returned to the complainant. The present application is made to this Court to revise the order of the Sessions Judge.

2. It is contended on behalf of the applicant that the Sessions Judge had no jurisdiction in this case under Section 520, Criminal Procedure Code, to modify the order of the trial Court. The argument is that the Court of Session is neither a Court of appeal nor a Court of revision in this case within the meaning of Section

520, Criminal Procedure Code. In my opinion it is not a Court of appeal, as an appeal from the order of acquittal would lie to this Court and not to the Court of Session. The Court of appeal within the meaning of the section is the Court to which an appeal lies in the particular case, and not the Court to which the appeals would ordinarily lie from the Court deciding that particular case. This view is supported by the observations of Heaton J. in *In re Laxman Rangu Rangari* (1911) I.L.B. 35 Bom. 253 though the point that we have to consider did not arise in that case. The decision in *Queen-Empress v. Ahmed* I.L.R. (1886) Mad. 448 to which our attention has been drawn by Mr. Mulgaonkar, is opposed to this view. After giving my best consideration to the judgment, with all respect to the learned Judge, I am unable to agree with the interpretation of the section accepted by him. It is not essential that the appeal allowed, should be preferred to the Court of appeal; but the Court indicated is one to which the appeal lies in that case. The fact that the appeal against an acquittal can be preferred at the instance of the local Government and by nobody else does not make any difference on this point.

3. I am unable to see how in such a case the Court of Session can be treated as a Court of revision within the meaning of Section 520. Assuming, without admitting, that the complainant having no right of appeal, there was no Court of appeal so far as he was concerned within the meaning of the section, I think that the Court of revision in such a case would be the High Court and not the Court of Session for the purpose of Section 520, Criminal Procedure Code.

4. I am, therefore, of opinion that the Court of Session had no power to make the order complained of.

5. On the merits also, it seems to me that having regard to all the circumstances, the proper order would be to restore the cattle to the person in whose custody they were at the date of their seizure.

6. It is hardly necessary to add that this order will be without prejudice to the civil rights of the parties.

7. I would, therefore, set aside the order made by the Sessions Judge and restore that made by the trial Magistrate with reference to the cattle.

**Marten, J.**

8. I agree. In my judgment the decision of the learned Sessions Judge cannot be upheld either on the question of jurisdiction or on the merits.

9. As regards Queen-Empress v. Ahmed I.L.R. (1880) Mad. 448 the decision appears to have been that of a single judge in a case where the parties were unrepresented, and where consequently the Court did not have the benefit of any argument from counsel. Be that as it may, I respectfully prefer the view taken by my brother Shah in the judgment he has just delivered to that expressed by Mr. Justice Brandt in Queen-Empress v. Ahmed. The disputed agreement Exh. 181 is a curious one, for it purports to treat the cattle in question as a security for the return of the wife of accused No. 1 or alternatively as damages for her non-return. If this agreement be established, the rights of the parties under it can best be determined in a civil Court. The complainant can therefore now do what he could have done in the first instance, viz., have his rights ascertained in a civil Court instead of attempting to steal a march upon his opponents by instituting criminal proceedings against them for theft of the cattle the subject of the agreement Exh. 18/1, charges which the trial Magistrate has held to be unfounded,

10. I accordingly agree with the order proposed by my learned brother.

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