

In Re: A.B. Samant

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Court : Mumbai

Decided On : Dec-19-1933

Reported in : AIR1934Bom193; (1934)36BOMLR324

Judge : John Beaumont, Kt., C.J. and ;Barlee, J.

Appeal No. : Criminal Application For Revision No. 353 of 1933

Appellant : In Re: A.B. Samant

Judgement :

John Beaumont, Kt., C.J.

1. This is a revision application which raises a short point under Section 517 of the Criminal Procedure Code.

2. A man named Ramchandra was arrested on August 17, 1932. He afterwards absconded and was re-arrested on September 22, and there was then in his possession a sum of Rs. 512 partly in notes and partly in coins, which was taken possession of by the police under Section 51 of the Criminal Procedure Code. He was duly committed for trial, and on April 7, 1933, he engaged the present petitioner as his pleader to defend him, and on April 12 he gave a written request to Government to pay a sum of Rs. 406 out of the Rs. 512 which had been found on his person to his pleader. That application was refused. Subsequently the accused was convicted. There was no evidence before the Court that the sum of Rs. 512 was stolen property. In passing sentence the trial Court imposed a fine of

Rs. 500 on the accused person and then the Judge added:

I do not impose any punishment on the accused in default of the payment of the fine for I have fixed the amount of fine with due regard to the value of the money attached from their possession and I direct that the fine shall be recovered from the property in Court.

3. The question is whether that is a valid order as against the petitioner, the accused's pleader.

4. It is said by Mr. Pradhan on his behalf that the document of April 12 amounted to a good equitable assignment of a part of this money, and I will assume that was so. It is further said that the only way in which a fine can be recovered is under Section 386 of the Criminal Procedure Code (a) by issuing a warrant for the levy of the amount by attachment and sale of any moveable property belonging to the offender; or (b) by issuing a warrant to the Collector, and neither of those steps was taken. The learned Sessions Judge in dealing with this application came to the conclusion that the order was justified under Section 517, Criminal Procedure Code, and I think that his decision is right. That section provides that when a trial in any criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed. Here this money was in the custody of the Court. It has been argued that the order for payment of the money to Government was an order for the disposal of the money by delivery to a person claiming to be entitled to possession. But, in my opinion, Government had no title to possession which would justify the making of an order in their favour. It has also been suggested that the order can be justified under the general words 'or otherwise,' since the section provides for the disposal by various methods 'or otherwise' of any property in the custody of the Court. I think that the words 'or otherwise' must be read as ejusdem generis to the methods of disposal previously enumerated, and do not confer upon the Court a general power to make any order for disposal which it may deem fit. It seems to me, however, that the order made in this case can be

justified under the power to confiscate. The Court had power to make an order for the disposal of this money by confiscation, and it seems to me that the effect of the order which the Court made was to impose a fine and direct that that fine should be recovered by confiscation of the money in Court. I think that on that ground the order of the trial Court can be justified. We make no order on this petition.

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