

In Re: Sadashiv Narayan Valkar

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Court : Mumbai

Decided On : Nov-30-1908

Reported in : 1Ind.Cas.103

Judge : Chandavarkar and ;Heaton, JJ.

Appellant : In Re: Sadashiv Narayan Valkar

Judgement :

1. Section 517 of the Criminal Procedure Code invests the Magistrate with a discretionary power and it is a rule of law that such power must be exercised judicially, i.e., according to sound principles of law and not in an arbitrary manner. But what that means is not that the order is in the opinion of the higher tribunal of revision an improper one which it would not have passed, but that having regard to the materials before the Court exercising the discretion that discretion was exercised in a legal manner. Now, if there were no materials whatever before him, the Magistrate ought to have returned the property to the person from whom it was produced. But if there were some materials then the Magistrate's discretion came into operation and it was for him to say what order ought to be passed having regard to all the facts in the case.

2. Here there was a quarrel amongst the members of a joint Hindu family, and the Magistrate, although he held that no offence was committed, ordered that the property should be handed over to the complainant under the circumstances of the case. We cannot say that the discretion was illegally exercised. We must,

therefore, decline to interfere and the rule must be discharged.

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