

Mahomed Ali Vs. the State

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Court : Andhra Pradesh

Decided On : Dec-27-1956

Reported in : 1957CriLJ706

Judge : Qamar Hassan and ;Mohd. Ahmed Ansari, JJ.

Appellant : Mahomed Ali

Respondent : The State

Judgement :

ORDER

1. This is an application in revision by one Muhammed Ali and it is directed against the order dated 17th August 1954 of the Chief City Magistrate, Hyderabad whereby he dismissed the petitioner's application dated 5th July 1954 praying that money lying with the court below be refunded to him in the result of his acquittal.

2. Before advertng to the question involved herein, it may be mentioned that the petitioner was charged with offences falling under Sections 400 and 353 of the Hyderabad Penal Code for having obtained the sum claimed by cheating and fabrication of false document. On conclusion of the trial, he was found guilty of the said offences and sentenced to four years' rigorous imprisonment. That conviction and sentence was upheld on appeal. On a revision filed in this Court it was found that the Chief City Magistrate has no jurisdiction to try the petitioner and we by our judgment and order dated 18th June 1954 for reasons stated therein, acquitted

him. The Trial Magistrate while sentencing the petitioner had ordered that the monies recovered from the petitioner's possession may be handed over to the Commercial Corporation Mahabubnagar. As there was no specific order in our acquittal judgment with respect to the said amount, the petitioner applied to the Trial Magistrate for an order of its refund as a necessary consequence of his acquittal.

3. The learned Magistrate dismissed the application on two grounds : firstly because his previous order with respect to the disposal of money had not been expressly set aside by the High Court, and secondly because Section 517 of the Criminal Procedure Code was enough to justify the order which he had made.

4. It is this order which the petitioner assails in this revision. After hearing the learned advocates appearing on behalf of the parties, we think that the impugned order cannot be allowed to stand. For passing an order under Section 517, Criminal P. C., it is necessary that there should have been an inquiry or trial but where it is held either by the Trial Magistrate or by a superior court either in appeal or revision, that trial was without jurisdiction, the proceeding cannot be said to constitute a trial, and therefore it is not open to the Court to pass any order under Section 517. In other words, to constitute an inquiry or trial within the meaning of Section 517 it is a condition precedent that the proceeding must have concluded before a court of competent jurisdiction. It is quite true that in our judgment of 18th June 1954 we did not expressly set aside the order of the Trial Magistrate with respect to the disposal of the sums of money alleged to have been recovered from the petitioner but that omission would not validate the order which was void for being without jurisdiction.

5. For these reasons, in our view, the petitioner was perfectly justified in making an application praying for an order for disposal of the Bums of money according to law. The only section under which such an application could be made is Section 523, Criminal P. C. Clause (1) of Section 523 gives Magistrate power either to deliver the property to the person entitled to its possession or to pass such an order as he deems fit respecting its disposal. If he adopts the first alternative, he has to find out the person entitled to possession, and, if no one succeeds in

establishing his title to possession, the property should be placed at the disposal of the Government.

6. The revision petition is, therefore allowed, and the order of the Chief City Magistrate is set aside. As the learned Magistrate has already formed an opinion in the matter in question and the guilt of the accused, we direct that the proceeding be transferred and placed before the District Magistrate, Secunderabad, for disposal in accordance with law.

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