

Tara Chand Vs. the State

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Court : Madhya Pradesh

Decided On : Aug-04-1951

Reported in : 1951CriLJ1476

Judge : Dixit, J.

Appellant : Tara Chand

Respondent : The State

Judgement :

ORDER

Dixit, J.

1. The facts of the case out of which this revision petition arises are that on 17-7-46 a complaint) was filed by one Chhabiram against) one Chandra Sen under Section 372t Gwalior Penal Code, charging him with theft in respect of certain gold and silver ornaments. The pargana Magistrate, Gohad before whom the complaint was filed directed the police to investigate the complaint. The police after investigation put up a chalan under Section 372, Gwalior Penal Code, against Chandra Sen in the Court of Pargana Magistrate. They also produced in the Court the ornaments seized by them from Chandra Sen during the investigation. Chandra Sen died during the pen-dency of the trial. The Magistrate, therefore, passed an order stating that the trial hid abated on account of the death of the accused and directing that the property seized by the police from Chandra Sen as

the stolen property and produced in the Court be returned to Cbhabiram, the complainant. The learned Magistrate observed that from the police papers and on the evidence of some of the prosecution witnesses recorded by him it appeared to him that the property belonged to the complainant Chhabiram. Tarachand an heir of the deceased accused Chandra Sen, then, applied to the Sessions Judge, Bhind for the revision of the order of the Pargana Magistrate directing the return of the property to the complainant. Tara Chand claimed that he was entitled to the property. The revision petition was rejected by the Sessions Judge, Bhind. Tara Chand has now filed this petition to revise the orders of the Courts below about the return of the property to the complainant.

2. It seems to me that the order of the Magistrate as regards the disposal of the property in this case is illegal and without jurisdiction. Under Section 517, Or. P.C., a Magistrate has, no doubt, the power to restore the property to the possession of any party, but the Magistrate has jurisdiction to exercise this power only when the inquiry or trial relating to the offence, with respect to the property concerned, has concluded. Where there has been no inquiry or trial or where the inquiry or trial has not concluded, no order can be made under Section 517. The word 'concluded' in Section 517 means in my opinion, 'concluded after a full hearing with a final judgment or determination of the case against the accused.' For, clearly an order under Section 517 can be made only on the basis of the evidence recorded in the inquiry or trial and in accordance with the findings the Magistrate may arrive on that material. If, therefore, as in the present case, on account of the death of the accused the proceedings terminate without any decision on merits and a Magistrate retains no jurisdiction to give any decision on merit, then clearly the Magistrate has no jurisdiction to pass any order as regards the return of the property to either party. In such circumstances, the property must be returned to the police for disposal according to law.

3. Learned counsel for the appellant relied on In the matter of Kupppammall, 29 Mad. 875 and contended that as the trial abated on account of the death of the accused, the property must be returned to the custody of the person from whom it was taken. In the Madras case a person was charged with criminal breach of trust in respect of certain jewels. The police recovered from the accused the jewels and

sent them to the Magistrate along with the charge-sheet. The accused died before the trial and before any evidence was recorded. Thereupon, the alleged owner of the jewels applied to the Court to be put in possession of the jewels under Ss. 517 and 528, Criminal F. C, after an inquiry as to their ownership. On these facts the learned Chief Justice of the Madras High Court upheld the order of the Magistrate returning the jewels to the accused from whose custody they were taken. The judgment of the Madras High Court is a brief one. It was observed therein that the provisions of Section 517 did not apply and that as there was no evidence or finding about the ownership, S 523 Criminal PC , did not apply and that the Magistrate was not bound to hold an inquiry simply to determine the ownership of the jewels. I do not think much assistance can be derived by the applicant from this decision of the Madras High Court. With all respect, I find myself in agreement with the decision if it purports to lay down that in circumstances UAH as those present in that case and the case before me the property must be returned to the accused from whose custody it was taken. It is true that when the trial abates due to the death of the accused, it cannot be said that it has been concluded. It is also true that when once property is sent on to a Magistrate with a charge sheet, no proceedings in respect of the property can be taken by the police under Section 523 so long as the Magistrate has jurisdiction to dispose of the property in accordance with S3. 517 and 518 of the Code But, in my opinion, when on account of the death of the accused the trial or inquiry cannot be concluded and the Magistrate for that reason does not retain the jurisdiction to give a finding or to make a final judgment on the material before him, the power of the police to make a report to the Magistrate under Section 523 for the disposal of the property is not taken away. It seems to me on the clear wording of Ss. 517 and 523 of the Code that if any property alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence and seized by the police cannot be disposed of under Section 517, then Section 523 must apply.

4. For the above reasons, I think the order passed by the Pargana Magistrate directing the return of the property to the complainant was without jurisdiction. The Magistrate could not pass any order in favour of either party. I would, therefore, set aside the order of the Pargana Magistrate and direct that the ornaments produced

in the Court be made over to the police for disposal in accordance with the provisions of Section 523 of the Code.

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