

In Re: Subba Naidu

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Court : Chennai

Decided On : Mar-03-1922

Reported in : AIR1922Mad329; 71Ind.Cas.511; (1922)43MLJ87

Appellant : In Re: Subba Naidu

Judgement :

ORDER

Odgers, J.

1. In this case the complainant charged the accused with theft of two bullocks and in the first court they were convicted and fined Rs. 20 in default to suffer imprisonment for a week. The bulls were ordered to be handed over to the prosecution witness No. 1 who was the complainant. This case went on appeal to the Sub-Divisional Magistrate of Sivakasi. The Magistrate held that the witnesses who spoke to the theft were interested, that their evidence could not be relied on and also that there had been long delay in the investigation of the case. He therefore acquitted the accused on appeal. He did not say anything about the possession of the bulls. Sometime afterwards the accused who had been successful in the appeal against their conviction for theft moved the successor of the 1st Class Magistrate (who in the meantime had been transferred) for an order that the bulls should be restored to them, the appellants. The defence version of the occurrence was that the bulls had been sold to them the appellants. This was found against by the first court and is not distinctly found in their favour by the

lower appellate court. The bulls, however, were ordered to be handed over to the appellants with the remarks that the complainant's remedy if any was in the Civil Court.

2. Mr. S. Subramaniya Aiyar contends that this is really an alteration or a review of the order of the lower appellate Court as it originally stood and offends against the provisions of Section 369, Criminal Procedure Code. The lower Appellate Court purported to act under Section 520 and such an order would be perfectly regular had it been made at the time the appeal was heard. There is no doubt about that. I anticipated an argument as to the effect of an order of restoration having been made by the succeeding Magistrate to the one who passed Judgment in the appeal. But I heard nothing from Mr. Subramaniya Aiyar about that. So I conclude that there is no authority in his favour'. That point therefore goes.

3. The question under Section 369 has been argued at some length. I have been referred to some cases. One case, the earliest case *Rash Mohan Goswamy and Anr. v. Kalinath Raha and Anr.* 19 W.R. 3 is distinctly distinguishable from the present case in that the Magistrate in the Court of first instance distinctly refused to pass any order with reference to the disposal of the buffaloes. No such refusal appears here. But I am inclined to think that was an accidental omission which can be corrected under Section 369. The other case referred to is *Kanagasabai v. Emperor* I.L.R. (1909) Madr 94, which simply held that under Section 517 of the Criminal Procedure Code an order may be made for the delivery of the subject matter of the alleged theft to some party other than the party in whose possession the property was found at the date of the alleged theft. There is no doubt whatever that that is so. But that is, in my opinion, no authority for holding here that the property ought to be delivered over to the unsuccessful complainant. In *in re Laxman Rangu Rangari* I.L.R. (1911) 35 Bom. 253 it was held that the only court which could deal with the order regarding the disposal of the property was the court to which an appeal lay and that in that, case the applicant was wrong in applying to the District Magistrate to raise the order. In *in re Vemi Reddi Babu Reddy* (1917) 38 I.C. 309, in which the Weekly Reporter Case was referred to, Mr. Justice Sadasiva Aiyar certainly says 'an order under Section 517 ought to be made at the time of passing the Judgment in the Criminal Case itself.' He does

not however say that any subsequent order would be illegal as made without jurisdiction and I have been referred to no authority in that behalf. With regard to allowing the complainant petitioner, here, to have the possession of the bulls on security, I do not think I should make any such order. My strong impression is that the petitioner having failed in his criminal proceedings has not come here in revision in order to try and nullify the effect, of the proceedings in the lower Appellate Court. I think he is not justified in taking such a course. In any case I can find no ground however on the question of jurisdiction for interference in revision in this case.

4. The petition is dismissed.

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