

**Rasul Khan Vs. Emperor**

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**SooperKanoon Citation :** [sooperkanoon.com/854670](http://sooperkanoon.com/854670)

**Court :** Kolkata

**Decided On :** Jul-29-1926

**Reported in :** AIR1927Cal61

**Appellant :** Rasul Khan

**Respondent :** Emperor

**Judgement :**

**Duval, J.**

1. The facts out of which this Rule arises are as follows : The complainant is one Mathoo. His case is that he owned 4 buffaloes which apparently-strayed away and were finally taken to the pound by some Goalas who found them grazing at the Alipore Cantonment. Subsequently those buffaloes not being claimed within ten days, were sold, it is stated, under the provisions in force in this military pound and they were purchased by the present petitioner. Subsequently the complainant recognized two of his buffaloes going along the Upper Circular Road. He then discovered that they were in the possession of the present petitioner as also the other buffaloes. He then brought the case. Nathoo and another person were put on their trial before the Sub-Deputy Magistrate of Sealdah, exercising first class powers and were convicted and sentenced to three months' rigorous imprisonment under Section 411, Indian Penal Code. It may be added that when the case was started the buffaloes were handed over to the complainant on security under the

provisions of Section 516(a) Criminal Procedure Code and the complainant engaged to produce them unless the order was set aside on appeal. The case came up on appeal before the Sessions Judge of Alipore and was heard on the 6th of April.

2. The learned Sessions Judge found that the evidence of the receiving of stolen property was not sufficient and he therefore acquitted the accused. But he came to a finding that the buffaloes in question were the original property of Mathoo; and he was also of opinion that there was something not quite straight for ward which led to the sale at the Alipore pound. At the time of passing his judgment he passed no order as to what would be done with the buffaloes and it appears that consequently they were retained by the complainant who we are informed in this Court had subsequently sold them. This judgment as I have stated was passed on the 6th of April 1926. It next appears that on the 3rd of May an application was made to the Sessions Judge by the accused in which it was prayed that his purchased buffaloes may be delivered to him or in the alternative the complainant may be directed to execute a bond till the disposal of the title to the said buffaloes, by a civil Court. On this the learned Sessions Judge after hearing counsel recorded the following order:

I came to the conclusion that the buffaloes had actually been stolen, though the evidence against the petitioner was not complete. I, therefore, declined to interfere.

3. This order as I have stated was dated 3rd May, 1926. It was not, however, till the 16th June, that a petition was presented to this Court against that order and a Rule was issued on the grounds stated in the petition, these grounds being (1) that the buffaloes not having been found to be the subject of theft, and that the petitioner having been acquitted of the charge under Sections 879 and 411 Indian Penal Code, and being bona-fide in possession of the said buffaloes under his auction-purchase the said possession should be confirmed to him; (2) that in absence of any satisfactory evidence to prove that the buffaloes belonged to the complainant, the Court below should have itself retained the custody of the buffaloes, or have made over the custody to the petitioner, one that the learned

Sessions Judge has erred inasmuch as he did not come to any finding on this matter; (3) that the Court below should have at least directed the complainant to execute a fresh bond till the disposal of the question of title to the buffaloes by a civil Court.

4. Now it is no doubt an ordinary rule of law that when an accused is acquitted of a charge of theft and the property found with him is not found to be the subject of theft he is entitled to recover that property. Now here as a matter of fact the findings of both the Courts which we must accept as findings of facts, are that these buffaloes were the property of the complainant. When they strayed away they somehow got into the Alipore pound and they were sold for Rs. 69 the price which appears to us to be most inadequate. The question then is whether the Sessions Judge has been unreasonable in refusing to hand them over to the accused. In view of his findings of fact and the special circumstance of this case 'specially as very great suspicion is found by him and by the Court below as to the bona fides of the proceedings at the Alipore cantonment pound, we cannot say that his order is unreasonable and under the special circumstances of this case therefore we do not think that we should interfere. There is also another reason and that is this: though no doubt an application to the Sessions Judge was made within the time allowed by the law and customs of limitation and an application in revision to this Court within the time within which this Court hears revisional matters there has been undoubtedly great delay with the consequence that the buffaloes have passed into others hands and that is another reason why we should not exercise our revisional power in this matter. That disposes of the first two grounds. As to the third ground namely that the Court below should have directed the complainant to execute a fresh bond till the disposal of the question of title to the buffaloes, by a civil Court, we have not been shown any authority under the Code which would entitle us or the Court below to pass such an order. In the result the Rule is discharged.

**Roy, J.**

5. I agree.

