

Narendra Nath Mitra Vs. E. Studd

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Court : Kolkata

Decided On : May-29-1918

Reported in : 46Ind.Cas.708

Judge : Lancelot Sanderson, C.J. and ;Beachcroft, J.

Appellant : Narendra Nath Mitra

Respondent : E. Studd

Judgement :

Lancelot Sanderson, C.J.

1. This is a Rule which was obtained by Narendra Nath Mitter calling upon the Chief Presidency Magistrate and the opposite party to show cause why the order of the Chief Presidency Magistrate dated the 23rd January 1918 (directing that the three debentures referred to there-in should be returned to the opposite party) should not be set aside or why such further order should not be made as to this Court might seem fit.

2. It appears from the judgment, which was delivered by the learned Magistrate on the 13th of August 1917, that certain debentures were stolen from the office of Messrs. Thomson and Co. in April or May of 1916; that the Police were informed of this matter and the loss of the notes was advertised in the papers. It also appears that on the 23rd of June 1916 one Nagendra Nath Ghose, who has been since convicted of being unlawfully in possession of a large number of these

debentures, sold three of them, which are the debentures now in question, to one Fani Bhusan Manna, for the sum of Rs. 2,550 and it was alleged that Nagendra Nath Ghose gave to Nani Bhusan Manna a receipt for the money paid in respect of this transaction. It was further alleged that on the 30th of June Fani Bhusan Manna pledged one of the debentures, namely No. 1852, with Mr. Narendra Nath Mitter, the petitioner in this case, for Rs. 650 and, on the 12th of July Nani Bhusan Manna pledged the two other debentures, namely Nos. 1851 and 1856, with Mr. Mitter. A prosecution was instituted against Fani Bhusan Manna under Section 411 of the Indian Penal Code for being in possession of the three debentures knowing or having reason to believe that they were stolen property. The learned Magistrate in that case gave his judgment on the 13th of August 1917, and he acquitted Nani Bhusan Manna. In the course of that proceeding Mr. Mitter was called upon to produce the three debentures in question: and, during the course of his judgment, the learned Magistrate said, 'these debentures are payable bearer and are negotiable by delivery'. He then says, 'the evidence does not, in my opinion, bring home guilty knowledge to the accused' (who was Fani Bhusan Manna); and therefore, he was acquitted. On the therefore, he was acquitted. On the 33rd of January 1918, the learned Magistrate made an order upon an application, which had been made on 5th August 1917 by Mr. Mitter, that these debentures which were in the custody of the Court should be returned to the petitioner, Mr. Mitter, from whom they were taken. The order which the learned Magistrate made was as follows: 'It appears that the debentures in this application were either stolen or misappropriated from the complainant Studd from his office at Mission Row. They were sometime afterwards pledged to the petitioner by one Fani Bhusan Manna, who undoubtedly had no right to them. I am, therefore, of opinion that the petitioner has no more right to them than his vendor. 1, therefore, direct that they be made over to the complainant Studd, to whom they belong': and it is in respect of this order that the Rule to which I have referred was granted.

3. I desire to make it plain that we express no opinion as to the rights of Mr. Mitter or of Mr. Studd in respect of these three debentures. The only question we have to decide is as to whether the learned Magistrate was right in ordering on the 23rd of January 1918, that these three debentures should be handed over to Mr. Studd in our opinion that order should not have been made. The facts set out in the

judgment of the learned Magistrate do show that there are questions between these parties as to which of them, Mr. Mitter or Mr. Studd, is the rightful owner of these debentures. Both the learned Counsel and the learned Vakil who appeared before us to-day have said that in their opinion a civil suit must be brought to determine that question; and, we are of opinion that a civil suit is the proper procedure to determine such a question: and, that being so we do not think, having regard to the facts of this case, that the Magistrate ought to have interfered with the possession of the debentures and we think he should not have ordered them to be handed over to Mr. Studd. In our judgment, therefore, the order should be set aside and the Rule made absolute. But we think that precautions should be taken to see that Mr. Mitter does not deal with these debentures until the rights of the parties have been determined: and, Mr. Mukerjee who appeared for him has told us that he has no objection to the order which we now propose to make, and which is, that the three debentures should be deposited with the Registrar of the Original Side, and that they should remain with him for the space of three months, so that if Mr. Studd is advised to bring a suit for the recovery of these debentures he will be able so to do. If such suit is not instituted within three months from to-day, then the Registrar is to hand over the three debentures to Mr. Narendra Nath Mitter, and if the suit is brought the debentures will be subject to any order which the Judge on the Original Side may think fit to make on the application of the parties.

4. We, therefore, give a direction to the Chief Presidency Magistrate in accordance with our judgment to have the debentures deposited with the Registrar of the Original Side of this Court.