
(1879) 04 AHC CK 0006

Allahabad High Court

Case No: None

Empress of India

APPELLANT

Vs

Nilambar Babu

RESPONDENT

Date of Decision: April 21, 1879

Citation: (1880) ILR (All) 281

Hon'ble Judges: Spankie, J

Bench: Single Bench

Final Decision: Disposed Of

Judgement

Spankie, J.

A preliminary objection was taken by the Junior Government Pleader that this Court cannot interfere u/s 297 of the Criminal Procedure Code, as the order complained of purports to have been made u/s 416 of the Code, which directs the course to be pursued where the ownership of property seized by the police, as alleged or suspected to have been stolen, is unknown, and therefore the order was not made in the course of a "judicial proceeding." Ordinarily a proclamation issued u/s 416 would be made in consequence of a seizure by any police officer of property alleged (i) or suspected (ii) to have been stolen, or found (iii) under circumstances which create suspicion of the commission of any offence. On receiving the police report the Magistrate is to make such order respecting the custody and production of such property as he thinks proper (Section 415). But when the owner of any such property is unknown the Magistrate may detain it, or the proceeds thereof, if sold, and in case of such detention shall issue a proclamation, the particulars of which are detailed in Section 416.

2. It may perhaps be doubted, if nothing more be done than the mere issue of a proclamation, whether the course adopted by the Magistrate would have amounted to a "judicial proceeding." At the same time "judicial proceeding" means any proceeding in the course of which evidence is, or may be taken, or in which any judgment, sentence, or final order is passed on recorded evidence. The action of the

Magistrate in issuing the proclamation is to require any person who may have a claim to such property as may be sent in by the police u/s 415 to appear before him and establish his claim within six months. This is possibly a stage of a judicial proceeding, for at the expiration of the term provided by the proclamation, it is probable that a claimant might appear, and evidence would be recorded. But it is not necessary for me to determine the point in this case. For Nilambar Babu and Khazan Singh, the accused, were arrested and sent in to the Magistrate for trial u/s 411 of the Penal Code (the stolen property being alleged to belong to Government) after an investigation made by the police. This therefore was not a case in which, in dealing with the property seized by them, and finding that the owner was unknown the Magistrate had issued a proclamation u/s 416 of the Criminal Procedure Code.

3. The proceeding that followed was a judicial proceeding in which evidence was recorded, after which the Magistrate felt himself bound to discharge the accused, as there was nothing to establish the fact that any tea had ever been stolen or missed from the Commissariat godowns, and no claim on account of the tea had been made by the Commissariat Department. On the contrary, the Commissariat officials, Lieutenant Spence, Sub-Assistant Commissary-General, Sergeant Griffiths, his subordinate, and Lieutenant Davies, Quarter-Master, 22nd Regiment, Sergeant Harris, Quarter Master Sergeant, all concurred in saying that not only no tea had been stolen, but that under the circumstances it was impossible that it should have been stolen. The Magistrate states that special inquiry had been made by the police in order to ascertain how Nilambar Babu, the victualling qomashta, could have become possessed of the tea, which was proved to be ration tea, but nothing further had been elicited, the police reporting that the Commissariat officials would not disclose the real facts of the case.

4. "It must, however," remarks the Magistrate, "be admitted that the case against the two accused is of the very gravest suspicion: a sack of tea precisely resembling ration tea is carried off in a closed ekka (i.e., with the curtains down) from the neighbourhood of the commissariat godown, and no explanation appears as to whence this tea came: further, five similar sacks of tea are found in the possession of the victualling goviashta, regarding which he can give no explanation whatever, and which (tea) precisely resembled ration tea, which it is his duty to serve out for the troops. Under the circumstances there may possibly be some justification for the assertion of the police that the Commissariat officials, had they chosen to exert themselves, might have discovered how the gomashtha could have abstracted the Government tea; perhaps even now a thorough investigation into the Commissariat management here by the Heads of the Department might disclose the manner in which the speculation could have been carried on."

5. The Magistrate then discharged the accused, subject to their apprehension hereafter on the discovery of fresh evidence, and on the same day by a separate proceeding, or what is called "a footnote in the case of Nilambar Babu," ordered

that a copy of his judgment should be sent to the Commissary-General for information, together with a complete list of the military stores found in possession of the gomashtha, and further that "a proclamation u/s 416, Criminal Procedure Code, will issue regarding these articles." Nilambar Babu applies for a revision of this order under Sections 294, 297, and 419, Criminal Procedure Code, on the ground (i) that there was no evidence on record to show that the property was stolen property; (ii) that there was none that would justify action u/s 416 of the Code of Criminal Procedure; (iii) that the remarks made regarding the petitioner are not borne out by the evidence on record, and should be set aside; and (iv) that the property may be released in favour of the petitioner.

6. u/s 418 the Magistrate was at liberty, at the close of the inquiry into the police charge u/s 411, Penal Code, to make such order as appeared right for the disposal of the property produced before him, and regarding which any offence appeared to have been committed. It is contended that the Magistrate's finding shows that no offence appears to have been committed. But I do not understand the Magistrate to mean that no offence had been committed. I understand that he reluctantly felt himself compelled to discharge the accused for want of further evidence. The petitioner was aware, it would seem, that the Magistrate's order was made really u/s 418, for he cites Section 419 of the Criminal Procedure Code as one under which this Court could deal with it, and this is so. But there was a Court of Appeal to which he should have first resorted, viz., that of the Sessions Judge, who might have interfered in the matter.* Resort to this Court as one of Revision was premature, and it has been the practice, I think, of this Court not to interfere in revision, when the petitioner has neglected to avail himself of the ordinary channel of relief below. But as this application has already been admitted by a Judge of this Court, and as the Section (419) admits of my interference, it would be better perhaps and more convenient for all to dispose of the case here. My reasons for assuming that the order of the Magistrate was passed u/s 418 is that it was made at the conclusion of the inquiry in his Court into the alleged offence u/s 411 of the Penal Code, and a proclamation u/s 416 was issued, because Section 420 provides that an order passed under Sections 418 and 419 may be in the form of a reference of the property to the Magistrate of the District or to a Magistrate of a Division of a District, who shall in such cases deal with it as "if the property had been seized by the police and the seizure had been reported to him in the manner hereinbefore mentioned." It was not necessary in this case that Mr. White, the Magistrate, should make the order in the form referred to, as he was already competent to issue the proclamation referred to in Section 416. So far then it appears that the order was one within the competence of the Magistrate to make, and that the Magistrate believed that an offence had been committed, though it was not on the evidence before him established against the accused. Whether action u/s 416 was justified by the evidence was for the Magistrate to determine. I cannot say that he exercised his discretion wrongly regarding the tea regarding which the Babu made no claim. On

the contrary, the latter said that the tea was found in the house occupied by Khazan Singh, his servant, and he supposes that Khazan Singh put it there. Moreover he did not explain how he became possessed of the tea or sugar either, but he said that they were not ration food. He, however, explained his possession of other portions of the property found. There was moreover some evidence that the guns were his as also the "kukri" and pistol, and the cartridges did not appear to bear the Queen's mark. The other articles, too, were such as he could have bought at public auction or might reasonably have in his own possession. This, too, may be said of the sugar which did not exceed 1½ seers in quantity. The law requires that "an offence should appear to have been committed," and when this is the case, an order may be made u/s 418 of the Criminal Procedure Code. But with respect to the property proclaimed an offence appears to have been committed only as regards the tea. Therefore the proclamation must be confined to the tea found and seized by the police, and in this respect the order must be modified, and the remaining portion of the property will be excluded from the proclamation. I see no remarks on the part of the Magistrate regarding the Babu which are not warranted by the suspicious character and the circumstances of the case, and the Court below was quite justified in refusing to give back the tea, but the petitioner may have the rest of the property restored to him.

-----Foot Note-----

* The words "Court of Appeal" in Section 419 are not necessarily limited to a Court before which an appeal is at the moment pending--*Empress v. Joggesur Mochi* ILR Cal. 379.