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**(1963) 07 GAU CK 0002**

**Gauhati High Court**

**Case No:** None

Bhagabat Goor

APPELLANT

Vs

Hari Kishore Bhattacharjee

RESPONDENT

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**Date of Decision:** July 12, 1963

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 523, 523(2)

**Citation:** (1964) CriLJ 256

**Hon'ble Judges:** T.N.R. Tirumalpad, J.C.

**Bench:** Single Bench

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### Judgement

@JUDGMENTTAG-ORDER

T.N.R. Tirumalpad, J.C.

1. This reference has been made regarding the order of the Second Class Magistrate, Dnarmannagar, passed u/s 523(2) Cr. p. C. directing the bullock seized by the Police to be handed over to the respondent Hari Kishore Bhattacharjee, after holding that he was the rightful owner of the bullock.

2. The case arose as follows:

The respondent Hari Kishore Bhattacharjee, gave a report at the Dharmanagar Police Station on 18-5-60 that his bullock of unmixed black color, lame, thin and with a few red hairs on the shoulder and having horns 8 or 9 fingers in length was missing since 12-5-60. The police made a G. D. entry regarding the same. Hari Kishore Bhattacharjee, again appeared before the Dharmanagar police station on 16-3-61 with bullock black in color having a lunar white patch on the forehead and a mark on the right side of the belly with horns about 8 fingers in length and reported that it was his bullock which was missing from him, but that one Pyan Nath of Radhapur had come demanding the bullock saying that he had taken it from the petitioner one

Bhagabat Goor of Haltlong. Hari Kishore Bnattacnerjee said that on account of this dispute, he was producing the duty in the Police station, via A.S.I, one M. Roy, thereupon seized the bullock and made a G. U. entry that he had seized the same as unclaimed property and that he had handed it over to the Government pound for custody.

3. On 17-3-61, the petitioner Bhagabat Goor filed a petition before the S.D.M., Dnarmannagar, claiming the bun. On 22-3-61, the u/s Dnarmannagar Police station, sent report to the Magistrate mentioning the circumstances as stated above by me) under which the bull was seized as unclaimed property and he prayed that action may be taken u/s 523(2) Cr. P.C. for ascertaining the owner. Then the Magistrate registered a case u/s 523 and held an enquiry after issuing notice to the petitioner and the respondent and he held that the respondent was the right Fiji owner of the bullock and he directed bullock to be handed over to him.

4. The sessions Judge, in his order of reference has now stated that the Magistrate should not have proceeded u/s 523 Cr.PC as the conditions necessary for naming an enquiry thereunder did not exist and that the order passed by the Magistrate was, therefore, without jurisdiction. He has also pointed out that the Magistrate did not take into account the fact that the description of the ducky given by the respondent on 18-5-60 did not at all tally with the description of the bullock produced before that Police on; 16-3-1961 and that the order of the Magistrate holding the respondent to be the rightful owner of the bullock was clearly wrong.

5. I must say that the entire procedure adopted by the police as well as by the Magistrate has been illegal, in this case. When the respondent appeared before the police Station on 15-3-61 with the said bun in question, the Police Officer should not have seized the bull as unclaimed property. It was not unclaimed property at all. The report to the Police by the respondent was that the bull belonged to him and he also reported that one parry Nath was claiming the bull as belonging to the petitioner Bhagabat Gourmets, the bull was actually claimed by two parties. Under such circumstances the Police Officer should not have seized the bull as unclaimed property, in such a case, the owners of the bull has to be decided by a Civil court and the Police Officer should not have seized the bull and sent it to the Government pound. Instead, he should have directed the respondent to take back the bull and have the dispute relating to the bull settled in proper proceedings.

6. Again, when the petitioner moved the criminal court in the matter, the Magistrate had no jurisdiction to start proceedings u/s 523 Cr. P. C. Section 523 comes into play only when the seizure by a Police Officer of property taken u/s 51 Cr.PC or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the Commission of any offence, is reported to a Magistrate. The report of the Police Officer dated 22-3-61 to the Magistrate did not disclose that the seizure was under the circumstances contemplated under S. 523. The learned Magistrate should have therefore directed the Police to return the property to the person from

worn It was seized and he should not have started an enquiry u/s 523 Cr.PC What the Magistrate purported to do in the Inquiry was actually to decide the civil dispute" relating to the bull. He had no jurisdiction to do so. The entire proceedings u/s 523 taken by the Magistrate were, therefore, illegal.

7. the order of the Magistrate is, therefore, set aside and the proceedings before the Magistrate which were tagline without Jurisdiction are quashed. I find that the titlark has Been returned to the respondent by the Magistrate;, The bullock was seized from the respondent by the Fulcra arid hence it should be returned to the respondent and-fattens? I shall not interfere with that portion of me flraer. The dispute between the petitioner and the respondent regarding the ownership of the bullock is a matter, wince has to be decided In a Civil Court.