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Date: 23/10/2025

## Lala Har Bhagwandas and Another Vs Diwan Chand

## None

Court: Madhya Pradesh High Court

Date of Decision: Jan. 25, 1960

**Acts Referred:** 

Penal Code, 1860 (IPC) â€" Section 379, 454

**Citation:** (1960) CriLJ 919

Hon'ble Judges: P.K. Tare, J

Bench: Single Bench

## **Judgement**

## @JUDGMENTTAG-ORDER

P.K. Tare, J.

This petition purports to be one u/s 520. of the Criminal Procedure Code. It seeks a reversal of the order, dated 13-6-

1959, passed by Shri S. P. Hakim, First Additional Sessions Judge, Jabalpur, in Criminal Revision No. 17 of 1959, arising out of the direction

given by Shri H. N. Dubey, Magistrate First class, jabalpur about return of a truck involved in Criminal Case No. 1486 of 1958, dated 10-3-

1959.

2. The learned Counsel for the non-applicant urged that u/s 520 of the Criminal Procedure Code, no such application lies, where this Court is not

in seisin of an appeal or a revision. The learned Counsel for the applicants urged that Section 520 of the Criminal Procedure Code confers

supervisory powers on this Court. The said Section is as follows:

Any Court of appeal, confirmation, reference or revision may direct any order u/s 517, Section 518 or Section 519, passed by a Court

subordinate thereto, to be stayed pending consideration by the Former Court, and may modify, alter or annul such order and make any further

orders that may be just.

Where an appeal on a reference or a revision or a confirmation proceeding is pending before the High Court or has already been disposed of, an

application u/s 520 would, no doubt, lie to this Court. But, where the matter does not come up to the High Court at all, but the judgment of the first

Court or the Sessions Court becomes final, would an application under this Section lie to this Court?

3. The learned Counsel for the applicants invited attention to the observations of Shiv Dayal f in Shanta Ram v. State Criminal Revn. No. 6 of

1959. D/-5-2-1959. The learned Judge held that the expression "Court of appeal" merely indicates a Court which is the ordinary Court to which

an appeal is preferred from orders passed by the trial Court. In the opinion of the learned Judge, it is not a reasonable construction to add the

words "when such Court is hearing or disposing of an appeal from the judgment of conviction or acquittal passed by the trial Court" after the word

"Revision". In suport of this construction, the learned Judge relied on Assistant Collector of Customs Central Excise Kandarmngalam v. Krishna

Pil"ai AIR 1958 Mad 42. ChcraniilnI v. Jabar Chand. AIR 1953 MP 149 and Walchand Jasraj Marwadi Vs. Hari Anant Joshi, , The learned

Judge purported to dissent from the view expressed by Bose J. in AIR 1947 33 (Nagpur) .

4. According to the view expressed by Bose J. (as he then was) the Section is only an empowering Section conferring certain powers on the Court

of appeal, confirmation, reference or revision and nothing more. What Bose J. decided was that no appeal lies from an order passed u/s 517 of the

Criminal Procedure Code. The learned Judge was not required to decide the question raised in the present case. Therefore, I am of opinion that

there is no question of dissenting from the view of Boso J. The question involved was, however, squarely answered by a Division Bench of the

Nagpur High Court consisting of Hidayatullah C-J. (as he then was) and Mangalmurty J., upon a reference made by Mudholkar J. in Nandu v.

Dhasada 1957 M LJ 67, as follows:

This is a reference by Mudholkar J. referring the following questions for decision by a Division Bench:

- (i) Ã⁻¿Â½ Whether an appeal lies u/s 520 of the Code of Criminal Procedure against an order passed by a Criminal Court u/s 517 of the Code?
- (ii)  $\tilde{A}$ - $\hat{A}$  $\dot{\epsilon}$  $\hat{A}$ %If an appeal does lie, whether in respect of an order u/s 517 made while acquitting an accused person, an appeal would lie to a Court to

which it would normally lie from an order of conviction or whether it would lie to the High Court.?

The learned Judges of the Division Bench approving of the view of Bose J. in AIR 1947 33 (Nagpur) answered the reference as follows:

On the whole, we think that the concurrence of opinion on this point is that Section 520 of the Code of Criminal Procedure does not confer a right

of appeal but is only an enabling Section creating a supervisory power in Courts of appeal, confirmation, reference or revision. These Courts can

pass the order in the main case, or if no appeal has been filed against the main case, can be moved to pass such order as they think fit in respect of

the property involved in the criminal case. It may be pointed out that the subordination of Courts according to the better view is to be taken into

account in determining the forum, for the exercise of such supervisory powers. It is not necessary that the Court of appeal must every time be the

Court of appeal to which an appeal against the main decision can be taken. Our answer, therefore, to the first question is in the negative. The

second question as framed depends upon the first question being answered in the affirmative and need not be answered.

Earlier the learned Judges made the following observations who respect to the question, whether the appellate Court can be moved by way of an

original petition:

This power may be exercised by the Courts indicated either during the course of hearing of an appeal, confirmation, reference or revision or the

power may also be used even though no appeal confirmation, reference or revision may be pending. In other words, the power granted is a power

to control the action of the subordinate Court disposing of the property after the termination of a criminal case. There are no words here conferring

a right of appeal on anybody, though the superior Court can be moved to intervene when the order is against, any person. It is not necessary that it

should be by way of an appeal; it can be by way of a mare petition.

This Division Bench case was not brought to the notice of Shivdayal J. Had it been done, the reference made by him to the larger Bench would

have been unnecessary.

5. Therefore following the Division Bench, I would hold that the appellate Court can be moved by way of an original petition. I may also add that

even a revision u/s 435 or 439 of the Code would lie for the purpose. Therefore,, the preliminary objection raised on behalf of the non-applicant is

overruled, to conclude that the present petition is tenable.

6. So far as the facts of this case are concerned, the applicants were carrying on business of motor transport in partnership with the non-applicant,

Diwanchand. They had executed agreements in favour of each other regarding the truck which was the subject-matter of this dispute. The said

agreements were filed in the case as Ex. P. 2 and Ex. P. 3, which provided that the truck shall be in possession of the non-applicant and shall be

run by him. But, in case he fails to pay any instalments, the applicant would be entitled to take possession of the truck and to retain it till their

money is repaid. As some instalments were of paid the truck was taken possession of by the applicants. It was the non-applicant's case that the

applicants forcibly took away the truck against his consent and thereby committed an offence u/s 379, Indian Penal Code. The applicants" defence

was that the non-applicant handed over the truck to them voluntarily and there was no question of a criminal offence. On these contentions, the trial

Magistrate, ultimately, acquitted the applicants of the offence, with the following observations:

In the above circumstances, I am of the opinion that the accused have not committed any offence u/s 379 of the Indian Penal Code or u/s 4 of the

Debtors Act. Therefore. I hold the accused not guilty under any of the Sections as alleged by the prosecution. I. therefore, acquit accused

Harbhagwandas son of Ramduttamal and Kadhori Sah son of Lakhim Sah u/s 251-A (ii) of the Criminal Procedure Code.

As regards the truck No. 959 M. P. J., I am only concerned with the possession of the truck. It has been amply proved that this truck has been

seized from accused Bhagwandas from his garage. It is clear that the Criminal Courts have got juris- diction to decide the possession of the

property on the date of incident. The ownership and the] title are exclusively the jurisdiction of the Civil Court. As regards the possession there is

clear cut evidence that the accused Bhagwanclas has possession over the truck without any mala fide intention. Therefore, I would like to entrust

the truck M. P. J. 959 to accused Bhagwandas till the decision of the Civil Court with respect to the rights and the title if any by the aggrieved

party.

7. The learned Additional Sessions Judge, in his exhaustive revisional order, came to the conclusion that the truck should be delivered over to the

complainant, Diwanchand. The learned Judge considered the legal effect of the agieements (Ex. P. 2 and E. P. 3) between the parties, as also

considered the oral evidence with respect to the question as to who was entitled to possession of the truck. The learned Additional Sessions Judge

was of opinion that as there were two rulirics of this: Court, namely, Kashiram Vs. Bhagwandas Lallu Kurmi and Another, , decided by Chaturvedi

- J. and Prakash Chandra Jain Vs. Jagdish and Another, decidpi by Naik J., he could follow any one of the rulings.
- 8. In my opinion, while deciding the question about the return of the property involved in, the case, the appellate or the revisional Court can

certainly come to its conclusions, when it is exercising powers u/s 520, while hearing an appeal, revision, confirmation or reference. But, where no

appeal, revision, confirmation or reference comes up for hearing and the matter comes up for consideration by way of an original petition or a

revision u/s 435 or 439 of the Criminal Procedure Code, the appellate or the revisional Court cannot question the popriety or the legality of the

conviction or the acquittal. Because, in such a case the subject-matter is merely the direction about return of the property and not the conviction or

the acquittal. Nor, can this Court go into the question of rights of the parties based on the agreement entered into between the parties. That would

be a matter for decision by the Civil Court, where the aggrieved party would have s, right of suit. The scope of the powers exercisable u/s 520

against the direction about the return of the property would be merely to examine the legality or the propriety of the direction and if the appellate or

the revisional Court purports to sit in judgment over the conviction or the acquittal, that would be wholly unwarranted. It was against such a wrong

course that Kashiram Vs. Bhagwandas Lallu Kurmi and Another, . This was what the learned Judge observed:

Shri R. S. Dabir learned Counsel for the petitioner, however, contends that this Court has power to set aside the finding so far as an order u/s 517

is concerned. That will, in my opinion, under the special circumstances of this case, virtually amount to laying down that the learned Magistrate's

finding of fact was wrong, or, in other words, that the property said to be stolen belonged to the complainant and was, in fact, stolen by the

accused-non-applicant No. 1 from his house.

Chaturvedi J. followed the dictum laid down by their Lordships of the Supreme Court in Pushkar Singh Vs. State of Madhya Bharat and Another,

, which lays down that when an accused is acquitted and no offence with respect to the property is committed the Court would have no jurisdiction

to return the property to the complainant. But, where an offence with respect to the property is committed, but the accused cannot be punished, as

the prosecution fails to establish its case beyond reasonable doubt a different principle would apply.

The learned Additional Sessions Judge, however failed to note the distinction between the said ease decided by Chaturvedi J. and the other

case decided by Naik J. In Kashiram Vs. Bhagwandas Lallu Kurmi and Another, decided by Chaturvedi J., the accused had been prosecuted for

an. offence u/s 454, Indian Penal Code. They were acquitted of the offence and, it did not appear that any offence with respect to the property

was committed; and, therefore, the property that was said to be stolen property was directed to be returned to the accused. However, Chaturvedi

J., exercising inherent powers u/s 561-A of the Criminal Procedure Code, gave a direction that the property be detained for a period of 45 days to

enable the complainant to file a civil suit in the Civil Court. Chaturvedi J., agreed with the view of Bose J. in- AIR 1947 33 (Nagpur)

10. The case decided by Naik J. in Prakash Chandra Jain Vs. Jagdish and Another, was of a different type, wherein there was material on record

to show that the accused was not at all entitled to the property in question, although for the purpose of his guilt, he had been given benefit of doubt.

In that case there was a confession made by the accused, which, however, was not admissible for the purpose of finding him guilty, but, which was

admissible for the purpose of determining as to who was the best person entitled to the return of the property. In view of the confession of the

accused, the learned Judge held that the complainant was entitled to return of the property. He relied on Rani Sona v. Rao Sobhasingh (1936) 19

Nag LJ 264 and AIR 1949 17 (Nagpur) , the latter being decided by Hemeon J.

The cases before Hemeon J. and Naik J. were of the type, wherein the accused was acquitted by giving the benefit of doubt. Therefore, although

the guilt of the accused was not established beyond all reasonable doubt, yet the property involved was never the property of the accused and at

no time had the accused lawful possession of the property involved. Therefore, the only proper course to be followed in that type of eases, would

be to order the property to be returned to the complainant. If that were not done, the Court would be making a gift of A"s property to B for nOi

reason, whatsoever. Therefore, I am in entire agreement with the view expressed by Hemeon J-and Naik J. which would be applicable to that type

of cases.

11. The present case, in my opinion, pertains to a third type, where the question of possession, is disputable and the rights of the parties to

possession have to be decided on the basis of the agreements between the parties. That would be a matter for decision by a Civil Court. In a

criminal case, what the criminal Court has to see is the prima facie right to possession at the time of the incident and not to adjudicate upon the civil

rights of the parties. Prima facie, the accused-applicants were in possession of the truck at the time when it was seized. It may be that they may be

entitled to its possession under the agreements or they might have taken wrongful possession. But, in my opinion, the learned Additional Sessions

Judge could not go behind the judgment of acquittal of the trial Court in the manner that he has done. For the purpose of the revision, the.

Additional Scissions Judge ought to have seen that the judgment of acquittal was final and the finding in that behalf could not be open to a

challenge) before him.

As such, I am of opinion that the learned Judge did not apply the proper principle applicable to a case of the present type. The learned Judge failed

to see that the principles laid down by Chaturvedi J. and Naik J. are anplicablu to different types of cases. Therefore, there was no question of tine

learned Additional Sessions Judge choosing to follow any one of tlie said views. In fact, there is no conflict between the view of Ohifturvedi J. and

Naik J. I am in entire agreement with both the views of the learned Judges. But, in my opinion, the present case would be governed by the

principle indicated by Chaturvedi J. As such, I am of opinion that the learned Additional Sessions Judge was in error in reopening the finding of

acquittal given by the trial Magistrate and in purporting to follow the view of this Court on the assumption that there was a conflict between the

views of Chaturvedi T, and Naik J. To conclude, I am of opinion that the direction given by the learned Additional Sessions Judge was incorrect

while that given by the trial Magistrate was correct.

12. However, I am informed that the truck has already been handed over to the non-applicant and that the applicants have filed a civil suit for the

enforcement of their rights. The scope of the powers exercisable Under Sections 517 and 520 is only summary, which does not adjudicate upon

the civil rights of the parties. Therefore, when the aggrieved party has already resorted to a civil remedy, the present revision becomes infructuous.

For this reason I decline to interfere with the order of the learned Additional Sessions Judge, although, art my opinion, it may be incorrect. It is

open to the applicants to seek adjudication of their rights in the civil suit that is pending. Therefore, would dismiss this revision and leave the parties

to seek an adjudication of their rights in the suit that is pending, as was the course followed by Chaturvedi J. in Kashiram Vs. Bhagwandas Lallu

Kurmi and Another, .

13. As a result, this petition fails and is dismissed.