
(1952) 12 MP CK 0011

Madhya Pradesh High Court (Gwalior Bench)

Case No: Criminal Ref. No. 25 of 1952

Cheranjilal

APPELLANT

Vs

Jabar Chand

RESPONDENT

Date of Decision: Dec. 9, 1952

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 407(1), 423, 435, 435(4), 439

Hon'ble Judges: Dixit, J

Bench: Single Bench

Advocate: Bhagwandas Gupta, for the Appellant; Mungre, Government Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Dixit, J.

This is a reference by the District Magistrate of Shivpuri seeking orders of this Court with regard to the disposal of an application u/s 520, Code of Criminal Procedure pending before the District Magistrate. The facts are that the non-applicant Jabar Chand was tried by the Sub-Divisional Magistrate of Shivpuri for an offence of theft of ten bags of Jeera. The learned Sub-Divisional Magistrate while acquitting Jabar Chand ordered the confiscation to the State of the property. The complainant Chiranji Lal then filed a revision petition u/s 520, Code of Criminal Procedure, before the District Magistrate for the delivery of the bags of Jeera to him. While this revision petition was pending before the District Magistrate, Jabar Chand presented a petition u/s 520 of the Code to the Sessions Judge of Gwalior for the return of the property to him. The learned Sessions Judge after hearing Jabar Chand and the Public Prosecutor allowed the petition and passed an order directing the return of the bags of Jeera to Jabar Chand or in the alternative the payment to him of the proceeds of the sale if the property had already been sold. The District Magistrate now wants to know the effect the order of the Sessions Judge has on the application u/s 520 of the Code pending before the District Magistrate.

2. Mr. Mungre on behalf of the State contends that in view of the provisions of Section 435(4), the learned Sessions Judge having entertained and decided the application presented to him by Jabar Chand, the District Magistrate has now no jurisdiction to deal with the application filed before him by the complainant Chiranjilal, Mr. Bhagwandas Gupta, learned Counsel for Chiranjilal, on the other hand, contended that u/s 407(1) an appeal lies to the District Magistrate from a sentence passed by Second Class Magistrate and that therefore in the present case the District Magistrate's Court being the "Court of Appeal" for the purposes of Section 520 of the Code, he alone had the power to modify, alter or annul the order passed by the Sub-Divisional Magistrate of the Second Class u/s 517 of the Code with regard to the confiscation of the Jeera to the State.

3. In my opinion, the contention of the learned Government Advocate is well-founded and must be accepted. For the purposes of this reference I do not propose to examine the conflicting decisions of the various High Courts as to the forum to which an application u/s 520 of the Code is to be made or as to the nature of the Jurisdiction exercised by a superior Court under this section. It is, however, sufficient to state that, to me the view taken by a Full Bench of the Bombay High Court in [Walchand Jasraj Marwadi Vs. Hari Anant Joshi](#), (A) as to the meaning and scope of Section 520 of the Code appears to be correct. In that case it has been held that Section 520 means that any Court which has powers of appeal, confirmation, reference or revision in respect of the trial Court, that being the Court subordinate thereto referred to in the section, can make any substantive order it thinks fit in respect of property dealt with by the trial Court u/s 517, 518 or 519 of the Code. It has been further held in that case that if an application is made to the Sessions Court as the Court having powers of revision in respect of the trial Court in regard to orders relating to property made u/s 517, 518 or 519, then the Sessions Court can itself make a proper order and need not refer the matter to the High Court. It seems to me that the narrow interpretation put on Section 520 in the earlier decision of the Bombay High Court, namely "In re [In Re: Khima Rukhad](#), (B) and also in [Debi Ram and Another Vs. Emperor](#), (C) is not justified by the wording of Section 520 and the existence of Sections 423 and 439 in the Code which define the powers of the appellate Court and of the High Court as a Court of revision. I do not see anything in Section 520 of the Code to justify the view that the words "Court of appeal", in that section refer only to a Court to which either of the parties to the case could appeal and the Court of revision means the High Court. If the intention of the Legislature had been that the Court to which an appeal or revision lies in the particular case alone should modify, alter or annul the order of the trial Court u/s 517, 518 or 519 then it was unnecessary for the Legislature to insert the provisions of Section 520 in the Code. For, without that section when a party to a criminal case has appealed the appellate Court would have ample power u/s 423 of the Code to pass an appropriate order in respect of property dealt with by the trial Court u/s 517, 518 or 519 and likewise the High Court would have the power u/s 439 of the Code to pass order as

to the disposal of property in cases that come up before it in revision. The provisions of Section 529 would thus be rendered superfluous if they are interpreted in a narrow sense,

4. On the view I have taken of Section 520 it is clear that in the present case, both the Sessions Judge and the District Magistrate as a Court of revision had power u/s 520 to interfere with the orders of the trial Court u/s 517 with regard to the confiscation of the Jeera. The question, then, arises whether the learned Sessions Judge was justified in entertaining an application u/s 520 of the Code by the accused, when the complainant had already sought redress under that section from the District Magistrate. I do not think that in the face of the clear provisions of Clause (4) of Section 435, there can be any doubt on the point. u/s 435, an applicant may go for redress either to the District Magistrate or to the Sessions Judge, but under Clause (4) of the section when an application has been made either to the Sessions Judge or to the District Magistrate, no further application can be entertained by the other of them. It must, however, be noted that on general principle, the Jurisdiction of one of the Courts of concurrent Jurisdiction to deal with the matter exists so long as the other Court of co-ordinate power has not actually exercised jurisdiction in the matter and dealt with it. Therefore, the jurisdiction of the Sessions Judge to deal with an application u/s 520 is not taken away by the mere fact of the earlier presentation of a petition u/s 520 of the Code to the District Magistrate. It is only when an application is entertained and decided either by the District Magistrate or the Sessions Judge that the jurisdiction of the other of them to deal with the matter is lost. This view is supported by the decision of the Madras High Court in "Appachi Goundan v. Emperor AIR 1931 Mad 772 (2) (D). I am, therefore, inclined to think that the learned District Magistrate can now only reject the petition filed before him by the complainant. The question whether the order passed by the Sessions Judge is correct on merits does not arise for consideration in this reference. If the complainant and the State are in any way aggrieved by that order, they are at liberty to move this Court by way, of appropriate proceedings.

5. Before concluding I must observe that the reference made by the learned District Magistrate is really not warranted by any provision of the Code. No section in the Code gives power to the District Magistrate to make a reference to this Court for obtaining its opinion on a question arising in a case pending before the District Magistrate. The District Magistrate or the Sessions Judge is bound to dispose of all questions of law or fact arising before him and decide the case or appeal himself. I have no doubt, expressed an opinion on the question of the power and jurisdiction of the Sessions Judge to dispose of the application presented to him u/s 520 of the Code by the accused. But this I have done because of the special circumstances of the case and not because the District Magistrate is entitled to obtain an opinion of this Court in a case pending before him. With these observations this reference is returned to the District Magistrate without any orders from this Court as to what he should do in the petition pending before him.