

(1926) 01 CAL CK 0039

Calcutta High Court

Case No: None

Ram Dan Damani

APPELLANT

Vs

Hari Das Damini

RESPONDENT

Date of Decision: Jan. 19, 1926**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 517
- Penal Code, 1860 (IPC) - Section 420

Citation: AIR 1926 Cal 1048 : 95 Ind. Cas. 933**Hon'ble Judges:** Mukerji, J; Chotzner, J**Bench:** Division Bench

Judgement

Chotzner, J.

This is a Rule calling upon the Chief Presidency Magistrate and the opposite party to show cause why the order purporting to have been made u/s 517, Cr. P.C., directing certain tins of ghee which were found in the possession of the petitioner and which were ordered by the learned Magistrate to be made over to the opposite party should not be set aside.

2. It appears from the petition that the opposite party who was the complainant in the case lodged a complaint against the petitioner u/s 420, Indian Penal Code, charging him with having cheated him in respect of 26 tins of ghee. On search warrant being issued, the ghee was found in the petitioner's shop. The defence put forward by the petitioner was in these terms: "I had dealings with the complainant and whenever I took any goods I paid cash for them. I never took so many as 26 tins. The goods recovered by the Police were bought from the complainant by me. These were bought at different times during three months. There are four or five tins of ghee bought from the complainant still lying at my shop. Some have been sold. This case was instituted on my refusal to pay Rs. 290 to the complainant which he demanded for giving evidence in a case in which I was the complainant." The

learned Presidency Magistrate acquitted the accused petitioner u/s 258, Cr. P.C. In his order he says:--"The accused admits that the property before the Court was found in his shop. He is not able to show that he ever paid for it. I am inclined to think he has not yet paid for the property. I, therefore, direct that the property be made over to the complainant u/s 517, Cr. P. C." The Rule was obtained on the first and second grounds stated in the petition which are that the order for return of goods is bad in law and that the learned Magistrate having acquitted the accused had no jurisdiction to pass the order complained of," It seems plain that the petitioner is entitled to succeed. If the learned Magistrate" had found the petitioner guilty of the" offence of cheating, it would follow as the necessary result of that finding that the ghee discovered in the possession of the accused should be restored to its lawful owner, namely, the complainant. The Magistrate has not found him guilty; on the contrary by his order of acquittal he clearly holds that the criminal liability of the" petitioner has not been established, and, therefore, in our judgment Section 517 has not been properly applied by the Magistrate. In our opinion the proper order which the Magistrate should have made was that, the goods should remain in the possession of the person in whose, custody they were found. The Rule must, therefore, be made absolute and the order of the learned Presidency Magistrate be set aside.

Mukerji, J.

I agree.