

(1923) 02 CAL CK 0032

Calcutta High Court

Case No: None

Gour Mohan Dalui

APPELLANT

Vs

Bansidhar Byas

RESPONDENT

Date of Decision: Feb. 2, 1923

Acts Referred:

- Criminal Procedure Code, 1898 (CrPC) - Section 517

Citation: AIR 1923 Cal 598 : 71 Ind. Cas. 702

Hon'ble Judges: Suhrawardy, J; Newbould, J

Bench: Division Bench

Judgement

Newbould, J.

This Rule has been obtained against an order passed by the Fourth Presidency Magistrate, Calcutta, directing certain property to be returned to the opposite party. The order is recorded as having been passed u/s 519, Criminal Procedure Code, but it was evidently passed by the Magistrate in the exercise of his powers u/s 517, Criminal Procedure Code.

2. The facts, so far as they are necessary for the point now under consideration, are as follows: Certain moveable property was hypothecated to the opposite party as security for a loan by one Kartikeswar Roy. Kartikeswar removed some of this property from the possession of the opposite party and has been convicted of theft for removing this property. After removing this property he parted with it to the petitioner for, as the petitioner alleged, good consideration and the petitioner claimed as purchaser in good faith. At the conclusion of the trial the Magistrate directed this property to be returned to the complainant, opposite party, and against this order the Rule has been obtained.

3. I think the order passed by the Magistrate was a proper order which he was justified in passing in the exercise of his discretion u/s 517, Criminal Procedure Code. It is true, as contended by the petitioner, that the case is not a simple case of

stolen property being found in the possession of a third party who necessarily has no title. If the petitioner is an honest purchaser he would obtain by his purchase such right to the goods as subsisted after the opposite party's claim had been satisfied. It is urged that the Magistrate has passed his order on the finding that the petitioner was not acting honestly since he had at the trial disbelieved the petitioner's evidence. On reading the Magistrate's judgment we do not think it can be held that the Magistrate actually found that the petitioner was not a purchaser for value, and even if he had so found, such a finding would not be binding between the present parties in any subsequent litigation that may arise. But we think on the clear facts of the case the opposite party complainant is the proper person to recover possession of the property. He was in possession of the property with a lien on it for his debt. It will be restored to his possession but that will not give him a better right to the property than he had before it was taken from him. The restoration of the property to the complainant will not deprive the petitioner of such rights as he may be able to establish to recover his purchase money against such property of Kartikeswar Roy, if any, as may be left after the complainant's claim is satisfied. We do not know whether the property in the complainant's possession will or will not be sufficient to satisfy his claim. If it is insufficient, obviously the petitioner loses nothing by the property being taken from him, since by his purchase he got nothing. If it is sufficient he will be able to recover the whole or part of his purchase money in due course after the complainant's claim is satisfied. It is further urged that this order should not have been passed affecting the rights of the petitioner without the petitioner being heard. I think that, as a general rule, the Magistrate acting u/s 517, Criminal Procedure Code, should pass orders according to his discretion without making further enquiry and that this case is not one of those exceptional cases in which an enquiry was necessary.

4. We discharge this Rule.

5. Let the records be sent down at once.

Suhrawady, J.

6. I desire to base my decision on the view taken of Section 517, Criminal Procedure Code, namely, that it gives discretion to the Magistrate to pass such order as he thinks fit for the disposal of any property, the subject of the criminal charge. That discretion is to be used judicially. Unless I am satisfied that it has not been so used I am of opinion that sitting in revision I have no right to interfere with it. In this case if the goods remained with the complainant who has a lien upon them the right of the purchaser petitioner before us is not affected: whereas if the goods are delivered over to the petitioner the complainant will lose the lien he has got over them for the amount advanced by him. In this state of things I cannot say that the Magistrate has exercised his jurisdiction arbitrarily or improperly.