

(1914) 12 BOM CK 0009**Bombay High Court****Case No:** Criminal Application for Revision No. 320 of 1914

In Re: Kareppa Chanbasappa

APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 7, 1914**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 523, 524

Citation: AIR 1915 Bom 295 : (1915) 17 BOMLR 79**Hon'ble Judges:** Shah, J; Heaton, J**Bench:** Division Bench

Judgement

Heaton, J.

In this case a certain Kareppa was suspected as possibly having been concerned in a theft from the house of a certain Mokashi who gave information to the Police as a consequence of which a considerable quantity of jewelry and money was found in Kareppa's house and was taken possession of by the Police. Inquiry showed that there was no definite evidence on which a charge that Kareppa had been concerned in the theft could be based, nor was any of the property found in Kareppa's house claimed by Mokashi to be his. It became necessary, then, to make an order for the dispossal of the property. Acting u/s 523 of the Criminal Procedure Code the Magistrate came to the conclusion that the person entitled to the property was unknown. He issued a proclamation and when the six months required by the section had elapsed, no person had come forward to claim any of the properties. The Magistrate then determined that the property ought not to be returned to Kareppa unless he was able to show that it was legally acquired by him. In the Magistrate's opinion he was not able to show this and consequently he ordered that the property should be at the disposal of the Government. This order was upheld in appeal and the proceedings have come before us by way of revision.

2. I am not prepared to say that the Magistrate's proceedings can be said to be illegal having regard to the words used in Sections 523 and 524. Nevertheless, I

think in the circumstances of this case that the intention and spirit of these sections has been disregarded and that the order made by the Magistrate was in the circumstances an improper order. I will say briefly why I hold this opinion and I must be understood as speaking purely with reference to the circumstances of this case and in no way generalizing. The property was found with Kareppa. It was not claimed by any one else although steps were taken to give others the opportunity of claiming it. There was no evidence which really connected Kareppa with either the theft from Mokashi's house or any other theft, and the only reasons which eventually transpired for supposing that Kareppa had come by this property improperly were these : he did not appear to be anything but a poor man or to be pursuing a business which seemed likely to yield considerable profits and yet quite suddenly his wife and mistress were found to be wearing gold ornaments of considerable value and when his house came to be searched, he was found to be in the possession of somewhere above a thousand rupees (Rs. 1000) in money. If there had been anything specific against Kareppa, I think the further proceedings might have been justified, but there was nothing specific against him. There was only this general surmise which was based after all on the opinion of people who might, as people often are in their opinion of others, be mistaken. The principal ground on which the Magistrate based his order was that Kareppa himself gave an account of how he acquired his wealth which seemed to the Magistrate to be manifestly untrue. But I think the circumstances of the case did not in themselves require or justify an inquisitorial inquiry into the private affairs of this man Kareppa. I think the spirit of our criminal law and its provisions both indicate quite clearly that inquisitorial inquiries into the private affairs and concerns of any person are not to be made, except possibly in rare instances, unless there is something specific against that person. On the circumstances disclosed in this case I think that the proper course would have been to refrain from making that inquisitorial inquiry into Kareppa's private affairs which the Magistrate did make. That being so I do not think that the circumstance that Kareppa gave an account of how he had acquired his property which did not satisfy the Magistrate is a good reason for maintaining the order which he has made.

3. Therefore I would set aside the order and direct that the property which has been ordered to be at the disposal of Government should be returned to Kareppa.

Shah, J.

4. I concur.