

This man, at the time of his arrest, appears to have had a *dao* in his hand, and, taking the worst view of the evidence, was about to commit an assault on the Sub-Inspector when he was on the point of arresting him. It is hard to say that these materials are sufficient to bind down the two petitioners when they are already registered members of a criminal tribe.

We, accordingly, make the rule absolute. The order passed under section 118 of the Criminal Procedure Code against the two petitioners is discharged.

E. H. M.

Rule absolute.

CRIMINAL REVISION.

Before Rankin and Duval JJ.

SATTAR ALI

v.

AFZAL MAHOMED.*

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Aug. 19.

Accused—Discharge of accused—Disposal of elephant, the subject of the alleged offence—Claim of title to it by the accused—Proper order in the circumstances—Criminal Procedure Code (Act V of 1898), s. 517.

Where the petitioner, accused of abetment of the theft of an elephant, claimed to have purchased certain shares in the animal and his defence was apparently accepted by the trying Magistrate, and he was acquitted :—

Held, that, in the circumstances, it ought to have been made over to the accused, from whose possession the police had taken it, and not to the complainant.

Restitution to the accused ordered by the High Court.

On the complaint of one Afzal Mahomed, the petitioner was tried by Mr. A. Rahman, Extra

*Criminal Revision No. 671 of 1926, against the order of D. P. Ghose, Sessions Judge of Sylhet and Cachar, dated June 3, 1926.

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Assistant Commissioner of Karimgunge, on a charge of abetment of the theft of an elephant, under sections 379 and 109 of the Penal Code, and acquitted on the 4th November 1925.

The petitioner's defence was that one Nuriza Bibi, widow of the complainant's deceased brother, had obtained the elephant in lieu of her share in her husband's estate, that the petitioner first purchased an eight *gandas*' share in the animal from Kurban Ali, the vendee of Nuriza, and then a 14-annas share from the lady by a registered document, and that the animal continued in his possession till the police seized it. On the 4th November 1925, the Magistrate, after acquitting the accused, directed the animal to remain in the possession of the complainant, on furnishing security, until the Civil Court adjudged to the contrary, and prohibited its disposal till the period of appeal had expired. The Magistrate's order was upheld by the Sessions Judge of Sylhet. The petitioners then obtained the present Rule.

Moulvi Nuruddin Ahmed, for the petitioner.

Babu Paresh Lal Shome, for the opposite party.

RANKIN J. In this case a certain elephant which was in the house of the present petitioner was, on a certain night, seized by the police. It appears that the complainant said it was his elephant, and that it had been quite recently stolen. The petitioner's case was that it had been in his possession for a very long time, since the previous October. When the case came on trial before the Magistrate it appeared that the elephant had at one time been purchased in the name of the complainant on behalf of the joint family of the complainant and his brothers. The present petitioner's case was that a certain share in

the elephant went to a lady, as the widow of a brother, and that on partition of the joint family property the rest of the share, in the elephant, which had got something to do with the timber business, also went to the lady. He says that he purchased first of all the right of another person to whom the lady purported to sell her share, and secondly 14-annas so as to entitle him to 14-annas 8 *gandas* of the elephant. So far from that case being rejected by the Magistrate, the present petitioner was acquitted by the Magistrate of the charge of abetment of theft upon which he was tried. When the learned Magistrate came to deal with the question what, in these circumstances, he should do with the elephant he appears to have gone wrong because the correct order was to say that this elephant was found in the petitioner's house, and should go back to the petitioner, having been taken by the police compulsorily from him. Instead of that the Magistrate made an order handing it over to the complainant until the Civil Court should adjudge to the contrary, taking measures to preserve the elephant during the period limited for an appeal from his order. In my judgment that is a wrong decision. The elephant having been taken from the present petitioner's possession, on the failure of the case against him it should have gone back to the present petitioner from whom it had been taken. On these grounds I think this Rule should be made absolute, the order complained of should be set aside, and an order made, in lieu thereof, that the elephant be handed back to the present petitioner.

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RANKIN J.

DUVAL J. I agree.

Rule absolute.

E H. M.