APPELLATE CRIMINAL.

Before Mr. Justice Brandt.

1886.
September 1.

QUEEN EMPRESS

v.

AHMED.*

Criminal Procedure Code, ss. 517, 520.

An order passed under s. 517 of the Code of Criminal Procedure may be revised by a Court of Appeal although no appeal has been preferred in the case in which such order was passed.

THIS was a case referred to the High Court by F. H. Wilkinson, Sessions Judge of South Malabar.

The facts of the case were stated by the Judge as follows :—

"One Ahmed was charged with the theft of a gold chain. The Magistrate being of opinion that the complainant gave the gold chain to Bâva, her paramour, in order that a false case might be concocted against the accused who was also paying visits to the complainant, acquitted the accused but ordered the gold chain to be restored to complainant.

"His order was, I submit, contrary to the provisions of s. 517 of the Code of Criminal Procedure. There having been no appeal, I am doubtful if, under the provisions of s. 520, I can myself direct the order to be stayed and request the orders of the High Court on both points, viz., (1) the illegality of the Magistrate's order and (2) the power of a Court of Appeal to stay orders under s. 517 and to modify, alter or annul such order, no appeal having been presented."

Counsel were not instructed.

The Court (Brandt, J.) delivered the following

JUDGMENT :—There are decided cases : *Empress* v. *Joggessur Mochi*, (1) *Empress of India* v. *Nilambar Babu* (2) in which the question whether an appeal lies against an order passed under s. 517 of the Criminal Procedure Code, though there be no

* Criminal Revision Case 458 of 1886. (1) I.L.R., 3 Cal., 379.
(2) I.L.R., 2 All., 276.

appeal against the finding in the case in which the order was passed, has been decided in the affirmative, on the ground that the words "Court of Appeal" in s. 520 are not to be read as restricted to "a Court of Appeal before which an appeal is pending;" and it seems to me that the wording of the section is sufficient to show that the Sessions Court, as the Court to which appeals ordinarily lie from the decisions of the 1st-class Magistrate by whom this case was tried, had power to dispose of the question. As to whether the order made by the 1st-class Magistrate should be set aside: here again there is an authority—*in re Annapurnábai* (1)—to the point, in which it is shown that on general principles Courts are bound to restore property to the possession of those from whom it is taken for purposes of justice, unless the Court is of opinion that an offence has been committed in respect of that property, or that it has been used for the commission of an offence.

In this case, the finding was that the accused person was innocent, no offence having been committed *by him*, in respect of the gold necklace produced, and it not having been in any way used by him.

The Magistrate however had, it appears, reason to suspect or believe that the necklace had been used by the woman Káli, and one of the witnesses for the prosecution, her paramour, Báva, for the purpose of wrongfully obtaining a conviction of the accused; if that is so in fact, then an offence or offences would "appear to have been committed," and the necklace was used for the commission of an offence, and the Magistrate might perhaps on this ground—I do not decide the point—he might, I say, have made an order under s. 517; but if he had done so, an order restoring the necklace to the woman Káli, the owner, would certainly not be the proper order.

There is however practically no doubt that he ordered it to be given back to the woman simply because he found it to be her's; and I am not prepared to say there are sufficient reasons for interference in revision. If the complainant, Káli, and her paramour, Báva, really concocted a false case and used fabricated evidence against Ahmed, there are means of punishment other and more appropriate than the withholding of the necklace.

1) I.L.R., 1 Bom., 630.