

Queen-Empress v. Tomijuddi(1), *Giridhar Chatterjee v. Eradullah Naskar*(2), and *Binoda Sundari Chowdhurani v. Kali Kristo Pal Chowdhary*(3), to which my attention has been drawn but is more or less supported by them. It is scarcely necessary to add that though I hold the circumstance that the award of costs is not made at the very time the substantial question in the proceeding is disposed of, does not necessarily render the award invalid, I should not be understood as implying that the length of the interval is immaterial. In the usual course the award should almost invariably be contemporaneous with the decision as to the main question. A different course should be pursued only when the circumstances of the case really require the postponement of the disposal of the question of costs and no order in the matter should be passed except within a reasonable time after the disposal of the principal subject of the proceeding and in the presence of both the parties. Upon the facts of this case no objection on the score of long delay exists and in the view of the section I take, it is not open to me to go into the question as to whether the amount awarded is proper. I dismiss the petition.

VYTHIA-
NADA
TAMBIRAN
v.
MAYANDI
CHETTY.

APPELLATE CRIMINAL.

Before Sir Arnold White, Chief Justice.

IN THE MATTER OF KUPPAMMALL (COMPLAINANT), PETITIONER.*

1906
May 16.

Criminal Procedure Code—Act V of 1898, ss. 517-523 Sections not applicable where there was no trial and no evidence recorded.

When a person charged before the Magistrate with criminal breach of trust in respect of certain jewels died before trial and before any evidence was recorded and the alleged owner of the jewels, which were recovered by the Police from the pledgees and sent to the Magistrate along with the charge sheet, applied to be put in possession of them under sections 517 and 523 of the Code of Criminal Procedure after enquiry as to their ownership :

Held, that section 517 of the Code of Criminal Procedure did not apply to the case.

Held further, that as there was no evidence or finding about ownership, section 523 of the Code of Criminal Procedure did not apply and that the

(1) I.L.R. 24 Calc., 757.

(2) I.L.R. 22 Calc., 385.

(3) I.L.R. 22 Cal. 387.

* Criminal Revision Case No. 239 of 1906, presented under sections 435 and 439 of the Code of Criminal Procedure, praying the High Court to revise the order of F. D. Bird, Esq., Presidency Magistrate, Georgetown, in Calendar Case No. 11317 of 1906, dated 2nd May 1906.

IN THE MATTER OF KUPP-AMMAL. Magistrate was not bound to hold an inquiry simply to determine the ownership of the jewels.

THE facts necessary for this report are fully set out in the order of the Magistrate which is as follows:—

ORDER.—On the 9th April 1906 three charge sheets were put in by the Police of the C Division against one Mune Bai *alias* Mune Rao under section 406, Indian Penal Code, charging him with criminal breach of trust in respect of certain jewels borrowed by him from different persons and recovered by the Police, as the result of a complaint made by one of the persons concerned, from parties with whom they had been pledged. The jewels were sent to this Court with the charge sheets. As the accused was certified by the Medical officer of the Penitentiary to be too unwell to attend Court on the 9th, the cases were adjourned to the 19th *idem* and the accused remanded to that date. He died in the Penitentiary on the 13th April 1906. The matter now engaging the attention of the Court is the disposal of the property connected with the charge sheets. The case is a peculiar one and enquiries in the Magistrate's Courts in Madras have failed to produce a precedent. The alleged owners of the property, who say that the deceased accused borrowed it from them, pray for an order for its restoration to them, while the persons, with whom the accused pledged the property are equally desirous that it should be returned to the possession from which it was recovered by the Police.

2. Chapter XLIII, Criminal Procedure Code, contains the law for the guidance of Magistrates in the disposal of property. The only two sections that need be considered now are 517 and 523. The former empowers a Court *on the conclusion of an enquiry or a trial* to make such order as it thinks fit for the disposal of any property brought before it in any way in connection with the subject of such enquiry or trial. It has been ruled in Bombay High Court Criminal Ruling No. 10, dated 16th March 1898, that an order under section 517 *cannot be made before the conclusion of the trial*. The object is to ensure that the Magistrate shall be in possession of all the facts of the case before disposing of the property.

3. In the case *In re Davidin Durgaprasad*(1) it is laid down that section 517 is the only section under which a Court can

(1) I.L.R., 22 Bom., 844.

make an order for the disposal of property produced before it in the course of an enquiry or trial and if the Court finds that the matter does not come within section 517, the only legal order that can be passed is to restore the previous possession.

4. In this case, although the preliminary steps for a trial were taken, it cannot be said that the trial has been *concluded*, the real value of that word in that connection is "to make a final judgment or determination of." It is more correct to say that the trial has *abated*, that is, it has failed. I therefore hold that section 517, Criminal Procedure Code, does not apply to this matter.

5. The other section relating to the disposal of property by a Magistrate is section 523, Criminal Procedure Code. That gives a Magistrate power to make an order for the disposal of property seized by the Police under section 51, Criminal Procedure Code, or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence. Reading sections 517 and 523 together, it seems that when once property is sent on to a Magistrate with a charge sheet it is removed from the provisions of section 523 and we have already seen that the Magistrate must then act under section 517. This view is confirmed by the ruling *In re Ratanlal Rangildas*(1) "the scope of section 523 must be confined to property seized by the Police of their own motion in the exercise of the powers conferred on them by law, for instance, under sections 51, 54, 164 or 165, Criminal Procedure Code." We may therefore take it that section 523 does not apply to this case and it has already been held that section 517 does not. This being so, the remark *In re Ratanlal Rangildas*(1) must be borne in mind. "These cases " being, as I have pointed out, not of the classes contemplated by " sections 523 and 517 and there being, therefore, no provision of " the law authorising the Magistrate to depart from the general " rule that property taken under the authority of the law for a " particular purpose should, on the fulfilment of that purpose, go " back to the custody whence it was taken"

6. The particular purpose for which the Police seized this property was to secure the punishment of the person who had committed an offence in connection with it and not in order that it should be restored to its owner.

(1) I.L.R., 17 Bom., 748 at p. 755.

IN THE
MATTER OF
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MALL.

7. The principal function of a Criminal Court is to punish offenders. It has other duties of secondary importance to perform. One of them is to pass orders as to the disposal of property produced before it in connection with a trial. It does not appear that it is authorised to usurp the functions of a Civil Court and convert the trial of an accused person into an enquiry in regard to property.

8. I have heard Mr. S. Guruswami Chetti on behalf of one of the "owners" and I have considered carefully his contentions but they do not induce me to depart from the conclusions recorded above. It is true that both sections 517 and 523 have been enlarged since the date of the Bombay rulings quoted, but I do not find that the amendments render in any way inoperative the application of those rulings to the sections as they now stand.

9. In the result I hold that there is no authority for this Court to enter into a long and contested enquiry to enable it to arrive at a decision as to how the property before the Court should be disposed of. I therefore direct that the various articles of jewellery and the note-books produced by the Police in connection with the three charge sheets referred to, be returned to the parties from whose possession respectively they were taken, subject to a written undertaking by each person so receiving any article or articles to produce the particular and identical article or articles received by him before the Civil Court when called upon to do so; and I also direct that this order shall not take effect for one month from this date to enable the alleged owners of the property to apply to the High Court for the revision of this order and for the issue of such further orders as may be just under section 520, Criminal Procedure Code, should they wish to do so.

S. Guruswami Chetti for the petitioner.

ORDER.—I think the Magistrate was right. It was conceded by the vakil for the petitioner that the provisions of section 517, Criminal Procedure Code, did not apply. His contention was that he was entitled to an order under section 523. It seems to me that on the facts of the present case, section 523 has no application. There is no finding, and there is nothing to show, that the property in question belongs to the petitioner. As I read the section, there is no obligation on the Magistrate to hold an enquiry simply for the purpose of deciding whether the property claimed is the property of the petitioner.

The criminal revision case and the criminal miscellaneous petition are dismissed.