

## APPELLATE CRIMINAL.

*Before Mr. Justice Krishnan.*1922,  
November 18.

ARUNACHALA THEVAN (COMPLAINANT), PETITIONER.\*

*Criminal Procedure Code (Act V of 1898), ss. 407 and 520—  
Order as to disposal of property—Jurisdiction—Notice to the  
other side—Practice.*

A Subdivisional Magistrate hearing a Criminal Appeal under section 407 (2), Criminal Procedure Code, has power to pass orders under section 520, regarding the disposal of property in respect of which an offence has been committed, either at the time of disposing of the appeal or so soon thereafter that the order may be treated as part of the appeal proceedings.

*Jogi Venkiah v. Station House Officer of Narasapur*, (1922) 15 L.W., 534, and *In re Subba Raidu*, (1922) 15 L.W., 664, considered.

Notice should ordinarily be given unless there is good reason to dispense with it before reversing on appeal an order passed under section 517, Criminal Procedure Code.

*In re Laxman Rangu Rangari*, (1911) I.L.R., 35 Bom., 253, followed.

PETITION under sections 435 and 439 of the Code of Criminal Procedure (1898) and section 107 of the Government of India Act praying the High Court to revise the order of N. NARAYANASWAMI NAYUDU, Subdivisional Magistrate of Usilampatti, dated 29th November 1920, and made on the petition of one Vellachami Thevan of Avalsurampatti in Criminal Appeal No. 94 of 1920, preferred against the Judgment of the Court of the Stationary second class Magistrate of Tirumangalam in Calendar Case No. 422 of 1920.

Facts necessary for this report appear sufficiently from the Judgment.

*S. Subrahmanya Ayyar*, vakil for the petitioner.

*K. Ramanath Shenai*, Advocate for the first respondent.

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\* Criminal Revision Case No. 373 of 1922.

## JUDGMENT.

KRISHNAN, J.—This is an application by the complainant in Calendar Case No. 422 of 1920 on the file of the second class Magistrate of Tirumangalam to have an order passed by the Subdivisional Magistrate of Usilampatti, who heard the appeal against the conviction in that calendar case, regarding the disposal of two bulls which formed the subject matter of the complaint, set aside.

The complainant's case was that the bulls were entrusted to the accused, and that he committed breach of trust in respect of them. The accused was convicted in the first Court, and the bulls were ordered by that Magistrate to be handed over to the complainant under section 517, Criminal Procedure Code. On appeal the conviction was reversed by the Subdivisional Magistrate, but apparently he forgot to pass any orders regarding the bulls at the time. A month afterwards on a petition filed by one Vellachami Thevan, the person from whom the bulls were seized, he passed an order directing that the two bulls should be handed over to him, and this order he passed without any notice to the complainant. It is this order that the complainant asks this Court to revise.

Several points are taken before me in revision. It is first argued that the Subdivisional Magistrate had no jurisdiction whatever under section 520, Criminal Procedure Code, to pass the order that he did pass. It seems to me that this depends on the question whether the petition filed a month after the disposal of the appeal could be considered as part of the proceedings in the appeal itself or a new proceeding altogether. If it is to be treated as a new proceeding, I must follow the ruling of this Court in *Jogi Venkiah v. Station House Officer of Narasapur*(1), which says that the District

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Magistrate alone can pass orders on an application under section 520, when such an application is made to himself. But I have no doubt that that ruling will not apply, where on hearing an appeal against a conviction the Subdivisional Magistrate is asked to set aside an order under section 517. It seems to me that he can, treating it as part of the proceedings in the appeal itself, make an order under section 520, for the disposal of the property concerned in the case.

I sent for the records of the two cases cited in *Jogi Venkiah v. Station House Officer of Narasapur* (1) namely, Criminal Revision Cases Nos. 525 of 1905 and 84 of 1908, and I find they are both cases where the applications were confined to section 520, and were entirely unconnected with any criminal appeals. The expression in section 520 "any Court of Appeal" has no doubt been construed in these cases as meaning "Courts to which appeals ordinarily lie"; but, I think, when a District Magistrate has directed a case or a certain class of cases to be heard by a Subdivisional Magistrate, and under section 407 he hears the appeal, his Court comes within the words "Court of Appeal" as used in section 520 for that particular case or class of cases. In fact, it is the common practice in this Presidency for such Magistrates to pass orders under section 520, if necessary, when disposing of the appeal. I see no reason to interfere with this practice. Objection has never been taken to such orders as having been passed without jurisdiction. It will also be noted that section 423 (d) authorizes appellate Magistrates to pass consequential orders and orders under section 520 are usually consequential orders based on the findings in the appeal. According

to the contention of the petitioner in every case where some question of disposal of property comes in, the Sub-divisional Magistrate after hearing the appeal will have to stay his hands and let the parties go before the District Magistrate for an order regarding the disposal of property. This would seem to introduce an unnecessary and cumbersome procedure. Section 517, clause 3, which directs that an order for disposal of property should not be carried out until the period for filing an appeal is over or when an appeal is filed, until that appeal is disposed of, clearly indicates that the Court which hears the particular appeal can pass orders regarding the disposal of the property at the time the appeal is heard. But it is altogether a different question when an appeal is confined entirely to a question of disposal of property for, in such a case, I agree that the District Magistrate should hear the petition.

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There is another case *In re Subba Raidu*, (1) where it was held that where a Subdivisional Magistrate disposing of a Criminal Appeal fails to pass an order under section 520, it will be open to his successor to do so. This would depend upon whether the subsequent order could be treated as part of the original appeal proceedings. I see no reason why it should not ordinarily be treated as such unless it is very clear from the circumstances of the case that the two are so dissociated in fact that they could not be treated as parts of the same proceedings. That may happen when the time that has elapsed is so very great that such an inference can be drawn.

I am, therefore, of opinion that the first objection that the Subdivisional Magistrate had no jurisdiction to pass the order, must be overruled.

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The next point taken is that notice should have been given of the petition before any orders were passed. Ordinarily in such cases it is desirable that notice should be given, especially if the order is not passed on the day the appeal is disposed of; but there is no rule of law that requires that such notice is absolutely necessary. However, as in this particular case, it is not unlikely that the absence of notice of the hearing of the petition by the Subdivisional Magistrate has led to the passing of a wrong order, for it is not very clear from the records whether the bulls really belong to the petitioner or to the accused, I think it better that this case should be sent down to the Subdivisional Magistrate, requesting him to give a reasonable opportunity to the complainant to place his contention before him, and then to pass final orders as regards the disposal of the bulls.

I may refer in this connexion to a case *In re Lawman Rangu Rangari*(1) where it was held by a Bench of that Court that in reversing an order under section 517 the Magistrate should not act without giving notice to the complainant; the learned Judges went to the length of saying that the Magistrate (who in that case was the District Magistrate) was clearly wrong in upsetting the order of the trying Magistrate merely on the representation of the opponent. I think this rule should ordinarily be followed, unless there is good reason for dispensing with it. As in this case no notice was given, the case, as I have said, will be sent back to the Subdivisional Magistrate for fresh disposal. He should come to a clear finding on the question to whom the bulls belong on the materials which may be placed before him before passing his final orders.

It is also argued that the first Magistrate having once given over the bulls to the complainant in the first Court, it is no longer open to any Court to direct them to be returned to the accused. There is no provision in the new Code of Criminal Procedure which restricts the powers of the Court in this manner under section 520. In fact, the new section has added the words "and make any further orders that may be just." These words seem to me to be quite wide enough to empower the Court to direct the return of property. This contention also must therefore be overruled.

The order of the Subdivisional Magistrate, dated the 29th November 1920, is set aside, and he is directed to pass fresh orders in the light of the observations above made.

K.U.L.

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PRIVY COUNCIL.\*

KAMULAMMAL, SINCE DECEASED (DEFENDANT),

v.

VISVANATHASWAMI NAICKER, SINCE DECEASED  
(PLAINTIFF) AND OTHERS (DEFENDANTS).

1922,  
December,  
20.

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[On Appeal from the High Court of Judicature  
at Madras.]

*Hindu Law—Inheritance—Sudras—Illegitimate son—Extent of share—Widow of deceased.*

The half share which, under the Mitakshara, Chapter 1, section 12, an illegitimate son of a Sudra takes in the estate of his deceased father, is a half of that which he would have taken had he been legitimate, not a half of the share which the other participants take. Thus, as against the widow of the deceased, an illegitimate son takes a half, not a third of the estate.

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\* Present :—Lord BUCKMASTER, Lord PHILLIMORE, Mr. AMEEB ALI,  
Sir LAWRENCE JENKINS and Lord SALVESEN.