

APPELLATE CRIMINAL.

*Before Mr. Justice Cargenven.*1927.
April 21.

K. SRINIVASAMOORTHY (P.W. 5), PETITIONER,

v.

NARASIMHULU NAIDU (P.W. 1), RESPONDENT.*

Seized property—title doubtful—To whom to be returned—Sec. 520, Criminal Procedure Code (Act V of 1898)—“Court of Appeal, confirmation, reference or revision”—meaning of—if specifies nature of application to such Courts—provisions regarding appeals—if applicable.

Where the title to seized property is doubtful, it should be returned to the person from whom it was seized, unless there are special circumstances which would render such a course unjustifiable.

The Collector of Salem, (1873) 7 M.H.C.R., 233; In re Pandharinath Pundlik Revankar, (1916) I.L.R., 40 Bom., 186, referred to.

The phrase “Court of appeal, confirmation, reference, or revision” in section 520 of the Code of Criminal Procedure designates only the Courts, which can “modify, alter or annul” an order passed under the preceding sections of the code, and does not specify the nature of the application which has to be made to them. Such an application cannot be treated as an appeal attracting all the provisions regarding appeals.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the order of the Court of the Additional District Magistrate of Tanjore in Criminal Appeal No. 18 of 1926 preferred against the judgment of the Court of the Stationary Sub-Magistrate of Tanjore in C.C. No. 91 of 1926.

The facts are shortly:—

One Vijiaraghavulu, the accused in Criminal Case No. 91 of 1926 committed theft of certain currency

* Criminal Revision Case No. 925 of 1926.

notes, including a thousand rupees note from the respondent (P.W. 1). The accused cashed the thousand rupees note in the Central Co-operative Bank in Mysore and got small notes. The petitioner (P.W. 5) got a thousand rupees note from the bank in exchange for small notes. The note that was given to the petitioner happened to be the self-same note that was handed in by the accused into the bank. In the course of the investigation, the police seized the thousand rupees note in the possession of the petitioner as concerned with the offence of theft. After enquiry, the accused was convicted and the Sub-Magistrate directed the note to be returned to the respondent (P.W. 1). Against this order a petition was presented to the Additional District Magistrate of Tanjore who held that that petition was an appeal and that it was time-barred and dismissed it. Against that order of the Additional District Magistrate the petitioner filed the present Criminal Revision Petition to the High Court.

B. Sitarama Rao for petitioner.

A. Srinivasa Ayyangar for respondent.

JUDGMENT.

The question which arises on the merits of this case is whether a stolen currency note for Rs. 1,000 should be returned to the complainant, who lost it by the theft, or to the innocent third party, from whom it was recovered after passing through a bank. Before however coming to the merits, a question of procedure arises. The Stationary Sub-Magistrate of Tanjore who disposed of the theft case, directed that the note should be returned to the complainant. The subsequent recipient, now the petitioner, appealed against this decision to the District Magistrate, and the case was disposed of by the Additional District Magistrate of Tanjore. He held that an appeal lay, under the

SRINIVASA-
MOORTHY
v.
NARASIM-
HULLU
NAIDU.

SRINIVASA-
MOORTHY
v.
NARASIM-
HULU
NAIDU.

terms of section 520, Code of Criminal Procedure, to the District Magistrate, but that the petitioner's appeal was time-barred, and no satisfactory explanation had been given of the delay. He therefore dismissed it, holding at the same time that he could not treat the application as a revision petition.

A revision petition is now preferred against this decision to this Court.

It appears to me doubtful whether an application made under section 520 to a "Court of appeal, confirmation, reference, or revision" is in the nature of an appeal. The phrase I have quoted seems only to designate the Courts which can "modify, alter or annul" an order passed under the preceding sections, and not to specify the nature of the application which has to be made to them. For analogous powers possessed by superior Courts reference may be made to section 125, Code of Criminal Procedure, relating to the cancellation of a bond given for good behaviour, and to section 195, Code of Criminal Procedure, relating to sanction to prosecute. It seems to me that in all these cases the Court designated has been given special jurisdiction to pass what orders it thinks fit, and that it is not necessary to read into the section the provisions regarding appeals. I have been unable to obtain any light upon this point from decided cases, since neither in *Kunshi Ram v. The Crown*(1) nor in *In re Arunachala Tevan*(2) did the question arise in its present form; in the one the original order was passed by the Appellate Court; and in the other it was found possible to treat the proceeding as part of the criminal appeal. In these circumstances I hold that the application to the Additional District Magistrate was not an appeal and therefore not time-barred. He had jurisdiction to entertain it, and his

(1) (1923) I.L.R., 4 Lah., 49.

(2) (1923) I.L.R., 46 Mad., 162.

refusal to do so, in my view, enables this Court to entertain this Criminal Revision Petition.

On the merits, the principle which I am disposed to adopt, against the adoption of which I have not been shown any authority, is, that where the title to seized property is doubtful, it should be returned to the person from whom it was seized, unless there are special circumstances which would render such a course unjustifiable. In the present case, there is no doubt that the petitioner received the note in all good faith, and the title is not so much doubtful as pretty evidently with him, as property to a currency note passes by mere delivery. That was the principle adopted in an old Madras case, *The Collector of Salem*(1) and *In re Pandharinath Pundlik*(2). The facts of the latter case were in essentials similar to those here. For the complainant it has been suggested that it is not for this Court in revising the Sub-Magistrate's order to interfere with his discretion. This argument receives no support from the terms of section 525, Code of Criminal Procedure, and since revision of the order may save subsequent litigation, I think that there is ample ground for revising it. Accordingly I allow the Criminal Revision Petition, set aside the order of the lower Courts and direct that the Sub-Magistrate recover the currency note from the complainant (P.W. 1) and deliver it to the petitioner here (P.W. 5).

SRINIVASA-
MOORTHY
v.
NARASIM-
HULU
NAIDU.

B.C.S.

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