

APPELLATE CRIMINAL.

Before Mr. Justice Devadoss.

1927,
October 21.

SHAIK DAWOOD AND TWO OTHERS (PETITIONERS),

v.

VELAYUDA SEMMANOTTI AND TEN OTHERS (RESPONDENTS).*

Criminal Procedure Code (1898), sec. 517—“Property . . . regarding which any offence appears to have been committed”—Extent of meaning—Person not appearing in lower Court in enquiry—Appeal—No notice to such person—If a legitimate ground for complaint.

In section 517 of the Code of Criminal Procedure the clause “property . . . regarding which any offence appears to have been committed” includes within its meaning movable property regarding the possession of which a quarrel or a fight is begun, whatever may be the offence that might ultimately be committed in the course of the quarrel or the fight.

When a person does not choose to appear before the lower Court in any enquiry, he is not entitled to complain that he has not been served with notice of the proceedings in the appeal against the order of the lower Court.

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 Sessions of the West Tanjore Division, dated 11th January 1927, in Criminal Miscellaneous Petition No. 18 of 1926 (L. Dis. Ref. on P.R.C. No. 3 of 1926, Subdivisional Magistrate, Pattukotta).

K. S. Jayarama Ayyar and S. Nagaraja Ayyar for petitioners.

S. Swaminathan and M. Ranganatha Sastri for respondents.

Public Prosecutor for the Crown.

* Criminal Revision Case No. 51 of 1927.

JUDGMENT.

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This is an application to revise the order of the Sessions Judge of West Tanjore setting aside the order of the Subdivisional Magistrate with regard to the disposal of boats and nets.

The contention of Mr. Jayarama Ayyar for the petitioner is that the Sessions Judge had no jurisdiction to pass the order as he did not enquire into the case himself and as an appellate Court he was not justified in interfering with the order of the lower Court. The Subdivisional Magistrate of Pattukottai passed an order on 19th September 1926 with regard to the boats and nets directing that they be delivered to the fishermen. On 5th November 1926 in modification of the previous order he passed another order that the boats and nets should be delivered to the Muhammadans.

The question for consideration is whether the order of the Magistrate, dated 5th November 1926, was proper or improper. That was the order that was set aside by the Sessions Judge. The contention of Mr. Jayarama Ayyar is that there was no offence committed regarding the boats and nets, and therefore section 517 is not applicable to the case.

The first clause of section 517 runs thus :

“When an enquiry or a trial in any criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.”

The case tried by the Sessions Judge was one of murder, but the murder was committed in the course of a very serious rioting. The origin of the rioting was the attempt of the Muhammadans to take away from the

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fishermen boats and nets which they said they were entitled to take, inasmuch as the fishermen did not act up to the terms of the contract between the fishermen and the Muhammadans. P.W. 11 who was examined by the Subdivisional Magistrate during the preliminary enquiry stated as follows. "Some fifty or sixty fishermen were there drawing nets and drying them up. We asked them for our nets and boats. Accused 2 and others said "where are your boats and nets, what money do you ask". Accused 3 did not answer me, Hasana Lubbai then said "If you do not return the tackle to-day, I shall see how you fish to-morrow in the sea". Accused 2 and 3 then incited accused 1 to cut. The learned Sessions Judge who tried the murder case observes in paragraph 18 of his judgment "P.Ws. 5, 6, 7, 10, 11 and 13 went there to assist the Muhammadans. I have no doubt that it was the Muhammadans that went to the seashore to pick up a quarrel and to take away the nets and boats from the fishermen forcibly. They also took some Pariahs and Pallas to help them". The finding of the learned Judge as supported by the evidence of P.W. 1 was that the attempt of the Muhammadans to take away forcibly from the fishermen boats, nets and tackle started the quarrel. That being so, the question is whether the clause "regarding which an offence has been committed" governs the case or not. I am satisfied that the meaning of the clause "regarding which an offence has been committed" includes movable property regarding the possession of which a quarrel is begun or a riot is begun whatever may be the offence that might ultimately be committed in the course of the quarrel or fight. Mr. Jayarama Ayyar's contention is that there is no finding by the learned Judge that the boats were actually the subject of an offence. Reading the order of the learned Sessions

Judge as a whole, I am satisfied that he came to the conclusion that the attempts to take possession of the boats and nets and tackle was the occasion which gave rise to the quarrel which ultimately ended in the murder of one of the Muhammadans, for at page 6 he says: "The merchants who had no possession appear to have taken the law into their own hands and wanted to take away the boats and nets by force without going to a Civil Court. This led to rioting and assault which culminated unfortunately in the death of one Muhammadan". Seeing that there is this clear finding, the learned Sessions Judge was perfectly justified in interfering with the wrong order of the Magistrate passed on 15th November 1926.

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Another point raised by Mr. Jayarama Ayyar is that two of the Muhammadans had no notice of these proceedings. It appears that only one of the three Muhammadans appeared before the Divisional Magistrate and opposed the application of the fishermen. That man was served with a notice by the Sessions Court. When a person does not choose to appear before the lower Court in an enquiry, he is not entitled to complain that he has not been served with notice of the proceedings in the appellate Court against the order of the lower Court. The police seem to have handed over the boats to certain Muhammadans on taking muchilikas. That would not give any right to the person in whose custody the boats were left to contest the right of the fishermen to the boats. I therefore decline to interfere with the order of the lower Court and dismiss the appeal. The order of the Sessions Judge will be given effect to.

B.C.F.