

CRIMINAL MOTION.

Before Mr. Justice Prinsep and Mr. Justice Pigot.

IN THE MATTER OF THE PETITION OF BASUDEB SURMA GOSSAIN AND
ANOTHER.^o

BASUDEB SURMA GOSSAIN v. NAZIRUDDIN.

1887

August 8.

*Criminal Procedure Code, 1892, s. 417—Order as to property as to which
offence has been committed—Discharge of accused.*

On the dismissal of a charge against certain persons of criminal misappropriation of an elephant the Magistrate under s. 517 of the Criminal Procedure Code ordered the elephant to be given to the Executive Engineer of the district, holding that it was the property of Government: *Held*, that the dismissal of the charge being in fact a finding that no offence had been committed in respect of the elephant, the Magistrate's order was illegal and must be set aside. In setting it aside the High Court held, however, following *In re Annopurna Bai* (1), that they had no power to order restitution of the elephant.

THE petitioners were the Government lessees of certain Government mehals, and were charged under ss. 403 and 176 of the Penal Code, and s. 7 of Act VI. of 1879, with the criminal misappropriation of an elephant. The Extra Assistant Commissioner of Tezporc before whom they were brought, ordered their discharge, and made an order under s. 517 of the Criminal Procedure Code that the elephant should be made over to the Executive Engineer of the district, on the ground that it was the property of Government.

The petitioners now moved the High Court under s. 439 of the Criminal Procedure Code to set this order aside.

Baboo *Ambica Churn Bose* for the petitioners.

Baboo *Ram Churn Mitter* contra.

The judgment of the Court (PRINSEP and PIGOT, JJ.) was as follows:—

Two persons were brought before the Extra Assistant Commissioner, a Magistrate of the first class at Tezporc, charged with

^o Criminal Motion No. 22 of 1887, against the order passed by Baboo Madhub Chunder Bordolai, Extra Assistant Commissioner of Tezporc, dated the 22nd of December, 1886.

(1) I. L. R., 1 Bom., 650.

criminal misappropriation of an elephant. They were discharged. The Magistrate, however, under s. 517 of the Criminal Procedure Code, ordered the elephant to be given to the Executive Engineer, Durrung, holding that it was the property of Government, and the elephant has consequently been made over to that officer by the police. We are of opinion that the Magistrate was not competent to pass this order, under s. 517 of the Criminal Procedure Code, because the elephant was not property produced before him regarding "which any offence had been committed or which had been used for the commission of any offence," the Magistrate having held that no offence was committed regarding this animal. We, therefore, set aside this order, although we are unable to give it any effect by ordering the restitution of the elephant. In this matter we follow the case of *In re Annopurna Bai* (1). The rule is made absolute without costs.

J. V. W.

Rule made absolute.

1887

BASUDEB
SURMA
GOSSAIN
P.
NAZIRUDDIN.

ORIGINAL CIVIL

Before Mr. Justice Trevelyan.

PUNCHANUN MULLICK (PLAINTIFF) v. SHIB CHUNDER MULLICK
AND OTHERS (DEFENDANTS)^a

1887
July 15.

Partition, Suit for—Partial partition—Jurisdiction of High Court, Original Side—Properties situate partly within and partly without jurisdiction.

On the Original Side of the High Court a suit for partition of joint estate, part of the property of which estate is situate within and part without the jurisdiction (there having been no leave granted under s. 12 of the Charter to sue concerning the portion outside the jurisdiction) is not liable to be dismissed on the ground that partial partition of a property cannot be granted, but may be decreed as far as the property within the jurisdiction is concerned.

Ruling of JACKSON, J., in *Rattan Monee Dutt v. Brojo Mohun Dutt* (2) explained.

THIS was a suit by one Punchanun Mullick for partition of certain properties formerly belonging to his great uncle Gour Kissore Mullick.

It appeared that Gour Kissore died in 1881 possessed of, amongst other properties, a pucca godown in Barra Bazaar, Calcutta; an

^a Suit No. 96 of 1887

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

(2) 22 W. R., 833.