

## REVISIONAL CRIMINAL.

Before Rowland and Chatterji, JJ.

1939.

DEOPUJAN MAHTO

Dec. 1, 4.

v.

KUKUR AHIR.\*

*Code of Criminal Procedure, 1898 (Act V of 1898), section 517—order, whether can be passed at a later date—application, whether any period of limitation is fixed for—application filed after some lapse of time—final order, whether should be passed without notice to the party sought to be affected.*

There is no period of limitation for an application for an order under section 517 of the Code of Criminal Procedure, 1898. An order under that section is not to be passed until the case is concluded and may be passed at the time of pronouncing the final order in the case or at a later date.

*Kanshi Ram v. The Crown*(<sup>1</sup>) and *Kishen Chand v. Nanak Chand*(<sup>2</sup>), followed.

*Abdul v. Ghulam Muhammad*(<sup>3</sup>), not followed.

*Rash Mohan Goshamy v. Kali Nath Raha*(<sup>4</sup>), distinguished.

The passing of an order under section 517 should not, however, be unreasonably delayed.

When an application for an order under section 517 is made after some lapse of time, it is proper on general principles of law that the party to be affected by the proposed order should have notice of the application.

*Arunachala Thevan, In re*(<sup>5</sup>), followed.

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\* Criminal Revision no. 545 of 1939, from an order of Rai Bahadur Saudagar Singh, Sessions Judge of Shahabad, dated the 28rd September, 1939.

(1) (1922) I. L. R. 4 Lah. 49.

(2) (1926) A. I. R. (Lah.) 9.

(3) (1928) I. L. R. 4 Lah. 460.

(4) (1872) 19 W. R. (Cr.) 3.

(5) (1922) I. L. R. 46 Mad. 162.

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Application in revision by the complainant.

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MAHTO  
D.  
KUKUR  
AHR.

The facts of the case material to this report are set out in the judgment of Rowland, J.

The case was in the first instance heard by Manohar Lall, J. who referred it to a Division Bench by the following order :

" The question for decision in this case is whether the learned Sessions Judge was competent to pass an order under section 520 of the Code of Criminal Procedure for restoring a buffalo to Kukur Ahir. The learned Magistrate declined to pass that order relying upon a decision in *Abdul v. Ghulam Muhammad*(1). It is contended by the opposite party that this decision was overruled in *Thiraj v. Emperor*(2) and was not approved in the Rangoon High Court in *U Po Hla v. Ko Po Shein*(3), and in the Bombay High Court in *Walchand Sasraj Marwari v. Hari Anant Joshi*(4). The matter is of some importance to the litigants in this province. No decided case of this court has been brought to my notice. I think it is desirable that the matter should be decided by a Division Bench. I order accordingly."

On this reference.

*S. K. Mazumdar*, for the petitioner.

*G. C. Das*, for the opposite party.

ROWLAND, J.—This application in revision has been referred to a Division Bench by the Single Judge before whom it in the first instance came up for hearing. The facts leading up to the application are as follows: The petitioner Deopujan was the complainant in a case regarding theft of two buffaloes which were missing on the 12th of August, 1937, from the *bathan* of Deopujan and his cousin. One she-buffalo was recovered shortly afterwards; but a buffalo-calf remained missing. In October, 1938, Deopujan got the proceedings revised on giving information that his buffalo-calf was in the

(1) (1923) I. L. R. 4 Lah. 460.

(2) (1928) I. L. R. 10 Lah. 187.

(3) (1929) I. L. R. 7 Rang. 345, F. B.

(4) (1932) I. L. R. 56 Bom. 369. F. B.

possession of Kukur Ahir. The police found the buffalo in Kukur's possession which Deopujan identified as his; whereas Kukur said that he got the animal from Suchit Ahir. On a prosecution of Kukur and Suchit, Kukur was acquitted but Suchit was convicted under section 414 of the Indian Penal Code. The conviction was set aside on appeal by the Sessions Judge on 13th March, 1939. The principal ground of acquittal was that the proof of identity of the animal with Deopujan's missing animal was not sufficiently cogent. It does not appear that any order as to disposal of the buffalo was passed either by the trying magistrate at the time when he convicted Suchit Ahir or by the learned Sessions Judge at the time when he acquitted that accused. On the 24th April, 1939, Suchit Ahir made an application before the Subdivisional Officer for restoration of the buffalo to him. Of this application the Subdivisional Officer gave notice to the opposite party and the present petitioner Deopujan put in a reply on the 26th June, 1939, stating that the buffalo was no longer in his possession having been already sold to Lakhi Koeri of Gobindpur. The Subdivisional Officer directed the matter to be put up for hearing on 13th July, 1939. In the meantime on 8th July, 1939, a petition was presented by Kukur Ahir associating himself with Suchit Ahir's claim and praying that the buffalo might be made over to either of them. On 13th July, 1939, however, the magistrate refused to pass any order. Kukur Ahir apparently allowed two months to elapse before taking any further steps and then he presented to the Sessions Judge on 19th September, 1939, an original application in which he made no reference to the petitions of himself and of Suchit Ahir before the Subdivisional Officer and to the orders passed on those petitions. The Sessions Judge called for the record from his record-room and without notice to any other party passed an order that the buffalo be made over to the petitioner Kukur Ahir "if she is in the custody or control of the lower court or the police". Against

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this order Deopujan has moved this Court in revision and two points are taken: first, that the Sessions Judge had not jurisdiction to pass the order; and, secondly, that such an order could not properly be passed without giving notice to the other side.

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On the first point it is argued that an order under section 517 ought to be passed at once on the disposal of the trial and that an order made sometime later on a separate application by a claimant is without jurisdiction. For this contention reference is made to *Abdul v. Ghulam Muhammad*<sup>(1)</sup>, a decision of a Single Judge of the Lahore High Court. With great respect the reasoning of the decision does not seem to be acceptable. The same Judge himself had taken a different view in *Kanshi Ram v. The Crown*<sup>(2)</sup>, where the view was taken that there is no period of limitation for an application for an order under section 517 of the Code of Criminal Procedure. And in *Kishen Chand v. Nanak Chand*<sup>(3)</sup>, another Judge of the same High Court observed that an order under section 517 of the Code of Criminal Procedure is not to be passed until the case is concluded and may be passed at the time of pronouncing the final order in the case or at a later date. The decision in *Abdul v. Ghulam Muhammad*<sup>(1)</sup>, was dissented from. I am of opinion that section 517 cannot be read as requiring that the order for disposal of property must be passed simultaneously with the judgment of the case unless we read into the section words that are not there. In *Rash Mohan Goshamy v. Kali Nath Raha*<sup>(4)</sup>, it was observed that an order for the disposal of property in a criminal Court must be made at the time of passing judgment; but this observation, as pointed out by Harrison, J., in the Lahore case of *Kishen Chand v. Nanak Chand*<sup>(3)</sup>, is directly based on the words in

(1) (1923) I. L. R. 4 Lah. 460.

(2) (1922) I. L. R. 4 Lah. 49.

(3) (1926) A. I. R. (Lah.) 9.

(4) (1872) 19 W. R. (Cr.) 3.

section 132(a) of the Code of Criminal Procedure of 1861 as amended in 1869, the words being

"the Court at the time of passing judgment may pass such order as appears right for the disposal, etc."

If the Legislature had wished the powers conferred under the present section 517 to be exercised subject to a time limit of this nature, there was no reason why a reference to time should not have been retained in the section in the form in which it took in successive enactments of the Code of Criminal Procedure. One may for the purposes of comparison refer to section 545 which deals with consequential orders for expenses or compensation. This section declares that the

"Court may *when passing judgment, order, etc.*"

Again when power is given in section 522 to direct restoration of immovable property to a person who has been dispossessed of it by force or criminal intimidation, the section expressly enacts that the

"Court may if it thinks fit *when convicting such person* or at any time *within one month* from the date of the conviction order the person dispossessed to be restored to possession".

Therefore on a reading of the sections of law regulating consequential orders, I am of opinion that section 517 gives jurisdiction to the court to pass necessary orders for the disposal of property either at the time of the conclusion of the trial or at a later date. It would be surprising if this were not so in relation to property in the custody of the Court, for it is the duty of the Court to make some arrangement for its disposal and it must continue to be the Court's duty until the property is disposed of in some way or other either by destruction or by passing out of the hands of the Court. Mr. Mazumdar for the petitioner contended, assuming the Court to have power to pass an order under section 517 on an application presented after the disposal of the trial, such an order at least ought to be passed within a reasonable time.

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I am prepared to say that the passing of such orders should not be unreasonably postponed, but not that the lapse of time relieves the Court of the duty and the corresponding jurisdiction to pass orders for the disposal of property which is in the Court's custody or under its control. The question was raised whether the Subdivisional Officer had jurisdiction to entertain the applications of Suchit and Kukur and if not whether the Sessions Judge had jurisdiction in appeal to interfere with his refusal of those applications. The question really does not arise because the Court of Sessions was moved as being the Court which had disposed of the criminal trial in appeal and was moved by means of an original application. The objections taken to the jurisdiction of the Court to entertain the application fail for the above reasons.

The next point taken that a final order should not have been passed without notice to the other side is in agreement with the broad general principle of procedure both in criminal and civil Courts that an order to the detriment of any party ought not to be passed without giving him notice and an opportunity of showing cause why it should not be made. It is true that the section does not in terms require the issue of any such notice and if an order regarding disposal of property is passed simultaneously with the judgment in the criminal case no one would contend that a separate notice to the parties to show cause in respect of the disposal of the property was necessary; but when an application is made after some lapse of time, I think it only proper on general principles of law that the party to be affected by the proposed order should have notice of the application. This view has been taken in the Madras High Court, *Arunachala Thevan, In re* (1). It will be necessary, therefore, to discharge the order of the Sessions Judge and remit the case to him for disposal after hearing the opposite

(1) (1922) I, L, R. 46 Mad. 162.

party, that is to say, the complainant of the criminal proceedings. I may point out that the order passed on the 23rd September, 1939, by the Sessions Judge has the disadvantage of leaving it open to a dispute between the parties as to whether the order actually affects the disposal of the buffalo or not, for the buffalo was to be made over to Kukur Ahir if she is in the custody or control of the lower Court or the police. It would be better for the Sessions Judge to ascertain whether the buffalo was at the date of the application in the custody or control of the lower Court or the police before passing an order so that the order eventually passed might be definite in its terms and certain in its application.

I would, therefore, make the rule absolute, set aside the order passed and direct the Sessions Judge to dispose of the matter in accordance with law.

Chatterji, J.—I entirely agree.

S. A. K.

*Rule made absolute.*

## APPELLATE CIVIL.

*Before Harries, C.J. and Dhavle, J.*

AWADHESH PRASAD MISSIR

*v.*

WIDOW OF TRIBENI PRASAD MISSIR.\*

*Code of Civil Procedure, 1908 (Act V of 1908), Order XXXII, rule 7—leave of Court, whether necessary before compromise is entered into—subsequent approval by Court, whether sufficient compliance with rule 7—guardian ad litem appointed for minor—father or karta, whether competent to compromise on behalf of minor.*

\* Appeal from Appellate Decree no. 558 of 1937, from a decision of Babu Kamini Kumar Banerji, Subordinate Judge, Darbhanga, dated the 30th January, 1937, affirming a decision of Babu Bijay Krishna Sarkar, Munsif of Darbhanga, dated the 18th April, 1935.

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