

REVISIONAL CRIMINAL.

Before Mr. Justice Broadway.

CHUNI LAL—Petitioner,

versus

ISHAR DAS—Respondent.

Criminal Revision No. 651 of 1922.

*Criminal Procedure Code, Act V of 1898, section 523—
Whether it is competent for a Magistrate to pass orders under this
section on police reports alone—Jurisdiction of the High Court to
examine such orders.*

Held, that it is not incumbent on a Magistrate to hold a judicial enquiry on oath before passing an order under section 523, Criminal Procedure Code. Such an order can be passed on police reports and papers alone, without any independent enquiry regarding the ownership of the property.

In re Ratanlal (1), Asi v Emperor (2), Husensha v Mashaksha (3), Queen-Empress v. Tribhovan (4), and Ma Thein Nu v. Ma The Hnit (5), referred to.

Held further that the High Court has jurisdiction to examine orders passed under section 523, Criminal Procedure Code and where it appeared, as in the present case, that the property was not recovered by the police from Petitioner's possession under section 51 or section 54 (4) of the Code and all that had been urged was that the Petitioner intended at some future date to misappropriate it and that he had charged the respondent with a criminal offence in order to facilitate the crime contemplated by him, the order making the property over to the respondent was not justified on the material before the Magistrate.

Ma Thein Nu v. Ma The Hnit (5), referred to.

*Case reported by W. deM. Malan, Esq., Sessions
Judge, Jhelum, with his No. 320 of 24th April 1922.*

ARJAN DAS, for Petitioner.

NAND LAL, for Respondent.

(1) (1892) I. L. R. 17 Bom. 748.

(3) (1910) 12 Bom. L. R. 232.

(2) (1911) 9 Indian Cases 634.

(4) (1884) I. L. R. 9 Bom. 131.

(5) (1919) 57 Indian Cases 81.

The report of the Sessions Judge, Jhelum, was as follows :—

The petitioner was ordered by *Sardar* Balwant Singh, exercising the powers of a Magistrate of the 1st Class in the Jhelum District on 12th October 1921 to hand over nearly 22 *tolas* of gold (about 6 *tolas* converted into ornaments and about 16 *tolas* in pieces to *Ishar Das* respondent) under section 523, Criminal Procedure Code.

The facts of this case are as follows :—

On 27th July 1921, *Chuni Lal*, goldsmith, of *Pind Dadan Khan*, reported to the police that he had been beaten by *Lala Ishar Das*, Municipal Commissioner, and 3 servants of the latter, and robbed of Rs. 1,000. The police investigated the case and found that it was false, and that the report had been made with the object of depriving *Lala Ishar Das* of certain gold which he had entrusted to *Chuni Lal*, to be converted into ornaments. The case was struck off as false on 12th October 1921 by the Sub-Divisional Magistrate, who by a separate order of the same date made over to *Ishar Das* certain gold and ornaments under section 523, Code of Criminal Procedure, directing him

“ not to change the appearance of the ornaments for 6 months at least, as *Chuni Lal* may possibly bring a Civil Suit.”

The gold and ornaments had been recovered from the possession of *Chuni Lal* during the investigation of the case instituted by him against *Ishar Das* and others.

Chuni Lal was subsequently prosecuted under section 182, Indian Penal Code, for making a false report and the case is understood to be still pending.

On 3rd November 1921, *Chuni Lal* filed a complaint against *Ishar Das* and other under section 395—section 323, Indian Penal Code. The complaint was dismissed after preliminary enquiry on 3rd February 1922, and *Chuni Lal*'s application for revision was dismissed by me in case No. 19 of 1922, decided on 22nd March 1922.

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The proceedings are forwarded for revision on the following grounds :—

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Chuni Lal has filed an application for revision of the order passed by the Sub-Divisional Magistrate under section 523, Code of Criminal Procedure, on 12th October 1921, on the ground that the gold and ornaments should not have been made over to Ishar Das, as they belonged partly to himself and partly to one of his customers.

I issued notice twice to Ishar Das, directing him to produce the gold and ornaments for my inspection. The notices have not been served, and Chuni Lal alleges that Ishar Das, who is an influential man, is evading service.

It does not appear that the notice is legally necessary before a case is reported to the High Court under section 438, Code of Criminal Procedure. It is clear that the order under section 523, Code of Criminal Procedure, was passed without any independent enquiry, the Magistrate having acted merely on the material contained in the proceedings of the police. This Court cannot interfere with the order under section 523, Code of Criminal Procedure, nor can it recover the gold and ornaments made over to Ishar Das. In my opinion, the order under revision was passed on insufficient grounds, and should be set aside, the gold and ornaments being made over to Chuni Lal, from whose possession they were taken, and Lala Ishar Das being left to file a civil suit for their recovery, if he wishes to do so. An alternative course would be to direct the Magistrate to make further enquiry into the case, and take such action under section 523, Code of Criminal Procedure or otherwise as may appear to be justified by the results of the enquiry.

The records of the case are accordingly submitted to the High Court under section 438, Code of Criminal Procedure, with the recommendation that action may be taken as indicated above.

BROADWAY, J.—ON the 27th July 1921 Chuni Lal, a goldsmith of Pind Dadan Khan, reported to the police

that he had been beaten by *Lala Ishar Das*, Municipal Commissioner, and some servants of his and had been robbed of Rs. 1,000.

On investigation the police came to the conclusion that the charge laid was false and that it had been brought with the object of depriving *Ishar Das* of certain gold which he had made over to *Chuni Lal* to be converted into ornaments. During the investigation made by the police *Ishar Das* had brought this allegation forward and had given a description of certain ornaments which led the police to take possession of the said ornaments from *Chuni Lal's* custody. On the 1st October 1921, *Chuni Lal* applied to the Court asking that the said ornaments be made over to him alleging that some of them belonged to clients of his who were agitating for their return and that the others belonged to him. On the 3rd October 1921 *Ishar Das* filed an application before the same Magistrate alleging that the articles were his and had been entrusted to *Chuni Lal* and that in order to be able to misappropriate them *Chuni Lal* had brought a false case of assault and robbery against him. On the 12th October 1921, on a report made by the police to the Magistrate stating the facts and giving expression to their opinion that the case brought by *Chuni Lal* was false, and asking for orders *quæ* the property, the Magistrate, purporting to act under section 523, Criminal Procedure Code, recorded an order directing that the property should be made over to *Ishar Das* as in the Magistrate's opinion the ornaments belonged to that person, *Chuni Lal* being at liberty to take such action in the Civil Court as he considered necessary. On the 3rd November 1921 *Chuni Lal* filed a complaint against *Ishar Das* and others under sections 395 and 323, Indian Penal Code which complaint was dismissed and an application for revision by him likewise proved ineffectual. He then moved the Sessions Judge attacking the correctness of the order, under section 523, Criminal Procedure Code, dated the 12th October 1921. The Sessions Judge came to the conclusion that the order complained against was wrong and had been made without due enquiry. He accordingly reported the matter to this Court under section 438, Criminal Procedure Code.

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Before me Mr. Arjan Das has supported the recommendation of the learned Sessions Judge on behalf of Chuni Lal while Mr. Nand Lal has endeavoured to support the order of the Magistrate. It was contended first that an order under section 523 could only be passed after a proper enquiry, whereas the order in the present case was passed on the police report and papers, and *In re Ratanlal* (1) was cited in support, an authority which was differed from in a case reported as *Asi v. Emperor* (2). The section itself does not make any magisterial enquiry imperative. It appears that the Magistrate has to satisfy himself, on such material as is before him who is entitled to possession of the property concerned, *Husansha v. Mashaksha* (3), and in *Queen-Empress v. Tribhovan* (4) it appears to have been laid down that the Magistrate would be justified in proceeding on the police papers, while in *Ma Thein Nu v. Ma The Hnit* (5) it is laid down by Rutledge J that it was not incumbent upon the Magistrate to hold a judicial enquiry upon oath. The weight of authority, therefore, appears to be against the contention advanced by Mr. Arjan Das that the order of the Magistrate was wrong as being passed on the police papers alone and not on any enquiry made by him.

The next question is whether this Court has jurisdiction to interfere with the order in revision, it being contended by Mr. Nand Lal that no such power existed. The authority already cited, *i. e.*, *Ma Thein Nu v. Ma The Hnit* (5) and which was referred to by Mr. Nand Lal is, however, opposed to this contention, and I have no doubt that, on a proper case being made out, a High Court has jurisdiction to examine orders passed under section 523, Criminal Procedure Code.

Turning to the case itself it appears that the police obtained possession of the property in question in the course of an investigation into an offence which in no way related to this property. Chuni Lal is a goldsmith and admittedly Ishar Das had had dealings with him. There would thus be nothing extraordinary in Ishar Das being able to describe ornaments which

(1) (1892) I. L. R. 17 Bom. 743.

(3) (1910) 12 Bom. L. R. 232.

(2) (1911) 9 Indian Cases 634.

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could be found in Chuni Lal's shop. The property was not taken possession of by the police under section 51, nor under section 54 (4) as urged by Mr. Nand Lal. The property was not taken possession of by the police under the suspicion of its being stolen property nor at that stage, at any rate, had Chuni Lal been charged with having committed any offence with reference to it. All that had been urged was that he intended at some future date to misappropriate these articles and that he had falsely charged Ishar Das with a criminal offence in order to facilitate the crime contemplated by him.

In these circumstances I am of opinion that the learned Sessions Judge is right in his view that the property ought not to have been made over to Ishar Das even on the material which was before the Magistrate. The mere fact that Ishar Das was admitted by Chuni Lal, to be the owner of one of the bracelets did not necessarily mean that Ishar Das was entitled to possession of the same for admittedly Ishar Das had given this bracelet to Chuni Lal for certain definite purposes and it is not unlikely that Chuni Lal could claim to retain possession of any articles belonging to Ishar Das until such time as he was paid for work done in connection with them. As, however, Chuni Lal definitely admitted before the Magistrate that one of the bracelets was the property of Ishar Das I maintain the order of the Magistrate *qua* that bracelet, but direct that the remaining ornaments and gold be forthwith made over to Chuni Lal. In making this order I have not lost sight of Mr. Nand Lal's contention that Chuni Lal has a right to go to the Civil Court to establish his claim to this property. I do not see any reason, however, to place him in the position of having to prove his title, a matter with which these proceedings are not concerned.

A. R

Revision accepted.

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