

APPELLATE CRIMINAL.

Before Mr. Justice Das.

MAUNG MRA TUN

v.

MA KRA ZOE PRU.*

1928

Feb. 15

Criminal Procedure Code (Act V of 1898), s. 517—Trial Court's power to dispose of property on acquittal—Whether Sessions Court has jurisdiction to alter such order.

The Trial Court acquitted the accused on a charge of criminal misappropriation of a pair of diamond *nagats*, but ordered the *nagats* to be returned to the complainant. On appeal against the order, the Sessions Judge set aside the order and directed the *nagats* to be returned to the respondent.

Held, that the Trial Court had full jurisdiction and power as to the disposal of the *nagats*. As the Trial Court had acquitted the accused, there could be no appeal to the Sessions Court and therefore the Sessions Court had no jurisdiction to interfere with the order passed by the Trial Court, nor had it any revisional power in the matter.

Emperor v. Debi Ram, 46 All. 623; *In re Khema Rukhad*, 42 Bom. 664; *Russul Bibee v. Ahmed Moosajec*, 34 Cal. 347—referred to.

DAS, J.—The petitioner in this case prosecuted the respondent for criminal misappropriation of a pair of diamond *nagats*. The Headquarters Magistrate of Akyab acquitted the accused but ordered the diamond *nagats* to be returned to the complainant.

Against this order the respondent appealed to the Sessions Judge. The learned Sessions Judge set aside the order of the Headquarters Magistrate and directed that the diamond *nagats* be returned to the respondent. The complainant now applies to this Court against the order of the learned Sessions Judge.

It is argued before me that the learned Sessions Judge had no jurisdiction to pass the order directing the return of the *nagats*. There can be no doubt that under section 517 of the Criminal Procedure Code the trying Court may make such order as it thinks fit for the disposal of any property produced before it

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or in its custody. The trying Court in this case had full jurisdiction and power to pass an order directing that the *nagats* be returned to the complainant. As the trying Court had acquitted the accused there could be no appeal from the acquittal to the Sessions Court; and the Sessions Court had no jurisdiction to interfere with the order passed by the trying Court. The Sessions Court had no revisional power in the matter. The only power which a Sessions Judge possesses under section 435 of the Criminal Procedure is to call for the record and direct that the execution of the sentence be suspended. Under section 436 of the Criminal Procedure Code, the Sessions Judge may direct further enquiry. Under section 437 of the Criminal Procedure Code the Sessions Judge may direct that the case be committed to sessions. When a Sessions Judge has called for the record under section 435 of the Criminal Procedure Code, he can report for the orders of the High Court the result of such examination with any recommendation he may choose to make. It is therefore clear that the Sessions Judge has no power to pass any orders setting aside an order passed by a Magistrate under section 517 of the Criminal Procedure Code when no appeal against the conviction or sentence is pending before the Sessions Judge. I may refer here to the cases of *In re Khema Rukhad* (1), *Emperor v. Debi Ram and another* (2) and *Russul Bibee v. Ahmed Moosajee* (3). I fully agree with the observations of the learned Judges in these cases.

I therefore set aside the order of the learned Sessions Judge directing the return of the *nagats* to the respondent and restore that passed by the trying Magistrate.

(1) (1918) 42 Bom. 664.

(2) (1924) 46 All. 623.

(3) (1907) 34 Cal. 347.