

in view of what I think is the meaning of the sections of the Contract Act under review that he can. The application must therefore be allowed.

As I have already stated the matter came before me by way of appeal. I am of opinion therefore that although this application is successful, the applicant ought not to receive his costs in this Court. The application must be allowed without costs in this Court but the respondent will pay to the applicant his costs in the two lower Courts.

1929

FUT CHONG

v.
MAUNG PO
CHO.

OTTER, J.

FULL BENCH (CRIMINAL).

*Before Sir Guy Ruddle, Kt., K.C., Chief Justice, Mr. Justice Maung Ba and
Mr. Justice Brown.*

U PO HLA

v.

KO PO SHEIN.*

1929

Mar. 6.

*Criminal Procedure Code (Act V of 1898), ss. 423, 435, 439, 517, 518, 519, 520—
Trial Court's order for disposal of property on conviction or acquittal—
Session Court's and District Magistrate's powers to alter such order as a
Court of revision—"Court of appeal, revision" wider meaning of under
s. 520—Appellate Court's and High Court's respective powers of disposal
under ss. 423 and 439.*

Held, that in the case of an acquittal by the trial Court, the Sessions Judge or District Magistrate as a Court of revision has power under s. 520 of the Criminal Procedure Code to interfere with the order of the trial Court passed under s. 517, regarding the disposal of the property in respect of which the offence was committed.

In the case of a conviction by a first class Magistrate the District Magistrate has, in the absence of an appeal to the Sessions Court, power to interfere with an order passed under s. 517 of the Criminal Procedure Code, by the trial Court.

Where there is an appeal or a case for revision, the Court of appeal and the High Court respectively have powers to pass orders as to disposal of property, under ss. 423 and 429 respectively of the Criminal Procedure Code. So the words "Court of appeal, or revision" in s. 520 have a wider meaning and

* Criminal Reference No. 1 of 1929 arising out of Criminal Revision No. 607B of 1928 from an order of the District Magistrate of Pyawbôn.

1929

U Po HLA
v.
KO PO
SHEIN.

are not restricted to a Court to which either of the parties to the criminal case has appealed or could appeal, or has applied for revision.

Empress v. Joggessur, 3 Cal. 379; *Empress v. Nilambar*, 2 All. 276; *King-Emperor v. Nga Po Chit*, 1 Ran. 199; *Queen-Empress v. Ahmed*, 9 Mad. 448—referred to and approved.

Maung Mra Tun v. Ma Kra Zoe Pru, 6 Ran. 259—overruled.

Emperor v. Debi Ram, 46 All. 623; In re *Khema Rukhad*, 42 Bom. 664—dissented from.

1929, January 12. Mr. Justice Maung Ba made the following reference :—

“ In Criminal Regular Trial No. 79 of 1928 of the Subdivisional Magistrate of Kyaiklat, the accused Ma Su was convicted of an offence under section 406 of the Indian Penal Code, and the Magistrate further, under section 517 (1) of the Criminal Procedure Code, ordered the exhibit property, which consisted of certain loose diamonds, to be returned to the complainant, one Maung Po Shein. The property was seized from the possession of three persons, Ma Hla Pu, Maung Po Hla and Ma Ma Gale, and the two latter filed appeals against the order of the trying Magistrate directing the return of the property to Maung Po Shein, before the District Magistrate under section 520 of the Criminal Procedure Code. The District Magistrate in his order has upheld the order of the trying Magistrate. Maung Po Hla has now applied to this Court for revision of the order of the District Magistrate, and the question arises as to whether the District Magistrate had jurisdiction to pass the order complained of. The Subdivisional Magistrate was a first class Magistrate, and in the case of *King-Emperor v. Nga Po Chit* (1), it was held by a Bench of this Court, that in the absence of an appeal to the Sessions Court from a conviction by a first class Magistrate, the District Magistrate had jurisdiction as a Court of revision to interfere with an order passed by the trial

(1) (1923) 1 Ran. 199.

Court under section 517 of the Criminal Procedure Code. On the other hand, in the case of *Maung Mra Tun v. Ma Kra Zoe Pru* (1), Das, J., has held that when the trial Court acquitted the accused on a charge of criminal misappropriation and passed an order under section 517, Criminal Procedure Code, for the disposal of the exhibit property, the Sessions Judge had no jurisdiction to interfere with the order passed by the trial Court under section 517. These two decisions appear to be conflicting, and in order to dispose of the matter now before me I consider that the following questions should be referred to a Full Bench for decision :—

1929
U PO HLA
v
K G PO
SHEEN.

(1) Whether, in the case of an acquittal by the trial Court, the Sessions Judge or District Magistrate as a Court of revision has power under section 520, Criminal Procedure Code, to interfere with the order of the trial Court passed under section 517 of the Criminal Procedure Code, regarding the disposal of the property in respect of which the offence was committed.

(2) Whether, in the case of a conviction by a first class Magistrate, the District Magistrate has, in the absence of an appeal to the Sessions Court, power to interfere with an order passed under section 517, Criminal Procedure Code, by the trial Court."

RUTLEDGE, C.J., MAUNG BA and BROWN, JJ.—Two questions have been referred to us in this reference :—

- (i) "Whether, in the case of an acquittal by the trial Court, the Sessions Judge or District Magistrate as a Court of revision has power under section 520, Criminal Procedure Code, to interfere with the order of the trial Court passed under section 517 of

1929

U PO HLA
v.
KO PO
SHEIN.

RUTLEDGE,
C.J.,
MAUNG BA
AND
BROWN, JJ.

the Criminal Procedure Code, regarding the disposal of the property in respect of which the offence was committed ; and;

- (ii) " Whether, in the case of a conviction by a first class Magistrate, the District Magistrate has, in the absence of an appeal to the Sessions Court, power to interfere with an order passed under section 517, Criminal Procedure Code, by the trial Court "

There are two conflicting decisions of this Court bearing on this point. In the case of *Maung Mra Tun v. Ma Kra Zoe Pru* (1), the trial Court had acquitted an accused on a charge of criminal misappropriation of a pair of diamond *nagats* and ordered the *nagats* to be returned to the complainant. Das, J., held that, 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.

The decision of a Bench of this Court in *King-Emperor v. Nga Po Chit* (2), does not appear to have been brought to the notice of the learned Judge in *Maung Mra Tun's* case. In that case Nga Po Chit had been convicted of criminal breach of trust in respect of three sewing machines by a first class Magistrate. Nga Po Chit did not appeal, but on application by the complainant the District Magistrate revised the order of the trial Magistrate as to the disposal of the sewing machines. It was held that the District Magistrate had jurisdiction to pass the order, although there had been no appeal, and in any case no appeal would have lain to him.

(1) (1928) 6 Ran. 259.

(2) (1923) 1 Ran. 199.

Section 520 of the Code of Criminal Procedure lays down that "any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518 or section 519 passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further orders that may be just."

1929
 U P. J. HLA
 Z.
 KO PO
 SHEIN.
 RUTLEDGE,
 C.J.,
 MAUNG BA
 AND
 BROWN. JJ.

Sections 517, 518 and 519 deal with orders as to the disposal of property produced before a Criminal Court, or regarding which an offence appears to have been committed.

The meaning of section 520 was considered by a Bench of the Bombay High Court in *In re Khema Rukhad* (1). In that case a first class Magistrate had acquitted certain accused who were charged with theft of cattle and had directed the cattle to be given back to the first accused. On application, the Sessions Judge had modified the order as to the disposal of the cattle. It was held that the Court of Session was not a Court of Appeal within the meaning of section 520, as an appeal from an order of acquittal would have lain to the High Court, and that it was not a Court of revision, as the Court of revision was also the High Court.

This decision was followed by a single Judge of the High Court of Allahabad in the case of *Emperor v. Debi Ram and another* (2), and Das, J., followed these two rulings in *Maung Mra Tun's* case.

A different view of the law had, however, been taken by the High Court of Allahabad in the earlier case of *Empress of India v. Nilambar Babu* (3). Judgment in that case was delivered in 1879, when

(1) (1918) 42 Bom. 664.

(2) (1924) 46 All. 623.

(3) (1879) 2 All. 276.

1929
 U PO HLA
 v.
 KO PO
 SHEIN.
 RUTLEDGE,
 C.J.,
 MAUNG BA
 AND
 BROWN, JJ.

the present Code of Criminal Procedure was not in force. It was held under the old Code that, when a Magistrate had discharged an accused person and passed orders as to the disposal of the property, the Sessions Judge was a Court of appeal, and that any one aggrieved by the order should have applied to him. This decision was followed by the High Court of Madras in the case of *Queen-Empress v. Ahmed* (1). In that case the accused had been acquitted and Brandt, J., observed in his judgment :

" * * * it seems to me that the wording of the section is sufficient to show that the Sessions Court, as the Court to which appeals ordinarily lie from the decisions of the first class Magistrate by whom this case was tried, had power to dispose of the question."

The Calcutta High Court took a similar view of the law in the case of *Empress v. Joggesur Mochi* (2). The section corresponding to section 520 of the present Code and the Code then in force was section 419, and Ainslie, J., remarked.—

"The words 'Court of appeal' in that section are not necessarily limited to a Court before which an appeal is at the moment pending. It may very often happen, as in this case, that the question of the propriety of an order under section 418 for the disposal of any property produced before the Court may in no way concern the convicted person; and we think it unreasonable to put such a construction on section 419 as shall make the power of the Judge to modify, alter or annul a Magistrate's order affecting one, contingent on the accident whether another person has or has not chosen to appeal."

It appears, therefore that the narrow interpretation of the terms of section 520 adopted in the recent rulings of the High Courts of Bombay and Allahabad is not the view that has been taken by the High Courts of Madras and Calcutta, and that the decision of a Bench of this Court in *Nga Po Chit's* case is

(1) (1886) 9 Mad. 448.

(2) (1878) 3 Cal. 379.

supported by previous judicial decisions. We agree generally with the reasoning of the late May Oung, J., in *Nga Po Chit's* case. We see nothing in the terms of section 520 of the Code justifying the view that the words "Court of appeal" in that section mean only a Court to which either of the parties to the criminal case has appealed or could appeal. Without this section when a party to a criminal case has appealed, the Court of appeal would have ample power to pass the necessary orders under section 423 of the Code. Similarly, it seems to us that the words "Court of revision" cannot be interpreted in the narrow sense suggested. The High Court, in dealing with cases in revision, has ample power under the provisions of section 439 to pass orders as to the disposal of property in cases which may come before it in revision; and the provisions of section 520 are unnecessary to give it this power.

All first class Magistrates are subordinate to the District Magistrate of the District, and either the Sessions Judge or the District Magistrate can, under section 435, call for any proceedings of any inferior Criminal Court in revision. The Sessions Judge and the District Magistrate are, therefore, both "Courts of revision" with regard to the proceedings of a first class Magistrate within their territorial jurisdiction. Their jurisdiction is a concurrent one, as it is in the case of revisional powers generally, and it does not seem to us that their jurisdiction in the matter is in any way dependent on the question whether an appeal has been filed or could be filed against the original order of acquittal or conviction in the case concerned.

We, therefore, answer both the questions referred in the affirmative.

1929

U' PO HLA

"K
KO PO
SHEIN.RUTLEDGE.
C.J.,
MAUNG BA
AND
BROWN. JJ.