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might be counted in her favour. I would therefore halve her fine. My order is, therefore, that the sentence passed against Ma Thein Tin will be that she will be fined Rs. 20, or in default ten days' rigorous imprisonment. Any excess fine which she may have paid will be refunded to her. The convictions of all the three accused will stand and the sentences passed on Maung Ba and Maung Thein Pe will be left unaltered.

CRIMINAL REVISION.

Before Mr. Justice Baguley.

1937

Nov. 15.

MAUNG PO TU AND ANOTHER
v.
THE KING.*

Inquiry—Case sent up for trial by Police—Appearance of parties before magistrate—Withdrawal of prosecution before hearing—Discharge of accused—Magistrate's order for disposal of jewellery seized—Application to the Sessions Court—Jurisdiction of Sessions Court to deal with application—Commencement and conclusion of inquiry—Criminal Procedure Code, ss. 190 (1) (b), 517, 520.

Where an accused, and the jewellery in respect of which he is accused of theft, are sent up by the police to the magistrate and the magistrate takes cognizance under s. 190 (*b*) of the Criminal Procedure Code, there is an "inquiry" before the Court, though no witnesses are examined. Action under clause (*b*) of s. 190 is one of the conditions requisite for the initiation of proceedings by the magistrate. If the prosecution is withdrawn after appearance of parties and fixing of dates for hearing merely, the withdrawal operates as a discharge of the accused, the inquiry is concluded and the proceedings terminate finally.

The magistrate therefore has jurisdiction to make an order under s. 517 of the Criminal Procedure Code for the disposal of the jewellery, and the Sessions Judge has power under s. 520 of the Code to modify, alter or annul such order.

B. C. De v. *Sama*, 35 C.W.N. 188; *In the matter of Kuppammal*, I.L.R. 29 Mad. 375; *U Ba Hlaing* v. *Sodani*, I.L.R. 14 Ran. 633, distinguished.

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* Criminal Revision No. 509B of 1937 from the order of the Sessions Judge of Prome in Criminal Appeal No. 201P of 1937.

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Ba Han for the applicants. The point for determination is whether the order passed by the trial Court regarding the disposal of the exhibits was passed under s. 517, Criminal Procedure Code. If so an appeal lies to the Sessions Judge.

In order that s. 517 of the Criminal Procedure Code may come into play, an enquiry or trial must have been concluded. In the present case the inquiry began so soon as the magistrate took cognizance of the case under s. 190 (*1*) (*b*) of the Code. S. 190, as the heading shows, relates to " conditions requisite for the initiation of proceedings " and it comes under Chapter XV which deals with the " jurisdiction of the criminal Courts in inquiries and trials." Everything dealt with in Chapter XV (which embraces s. 177 to s. 199A) relates either to an inquiry or trial. The initiation of proceedings mentioned in the headline of s. 190 refers to the commencement of an inquiry. Though every judicial proceeding is not an inquiry, every inquiry is a judicial proceeding. [S. 4, cll. (*k*) and (*m*) of the Criminal Procedure Code.] The inquiry in the present case began when the magistrate took cognizance of the case on receipt of a police report. It ended when the applicants were discharged as a result of the respondent's withdrawal of the case with the permission of the Court. S. 517 therefore applies, and an appeal lies to the Sessions Judge under s. 520 of the Code.

Clark for the complainant. Proceedings against the applicants began, but an inquiry had not been initiated because witnesses were not yet examined. *U Ba Hlaing* v. *Balabux* (1).

(1) I.L.R. 14 Ran. 633.

Even if an inquiry had begun, it was never heard. *B. C. De* v. *Sama* (1); *In the matter of Kuppammal* (2). The magistrate's order cannot therefore be under s. 517 which presupposes the conclusion of an inquiry or trial. No appeal therefore lies to the Sessions Judge.

BAGULEY, J.—This case comes before the Court under the following circumstances :

Ma Kyin Hla made a report to the police at the Paungdè Police Station complaining that Pu Tu and Ko Ko Gyi had committed an offence under section 380 of the Penal Code. The police investigated the case and sent both these persons up for trial, the charge sheet mentioning section 380, Penal Code read with section 411, Penal Code. The papers were transferred to the First Additional Magistrate, Paungdè, who entered the case in his Register, directed summonses to issue to witnesses and released the accused on bail on their furnishing security.

The case was then transferred by the District Magistrate, Prome, to the Second Additional Special Power Magistrate. On the 25th June 1937, both the accused appeared before him with their pleader : the complainant and her pleader were also present. For certain private reasons he asked them whether they objected to his dealing with the case and on their saying they had no objection he fixed three days for the trial and summoned ten witnesses for each day. Before the date fixed for hearing the witnesses, however, the complainant presented an application for permission to withdraw the case. The Magistrate told her she could not do so but in the end the case was withdrawn by the Court Prosecuting Inspector on instructions from the District Magistrate and with the permission of the trying

(1) 35 C.W.N. 198. (2) I.L.R. 29 Mad. 375.

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Magistrate. This withdrawal under section 494 of the Criminal Procedure Code operated as a discharge of the accused.

When the case was sent up for trial there were certain exhibits, mainly jewellery, sent up with the case. After the case had been withdrawn the question arose as to the disposal of these exhibits. The learned Magistrate heard the pleaders who appeared for both parties with regard to the disposal of the exhibits which had been seized by the police and produced in Court, and after hearing them he passed orders with regard to the disposal of the exhibits, purporting to act under section 517 of the Criminal Procedure Code. The two erstwhile accused filed an appeal under section 520 of the Criminal Procedure Code against the order passed by the Magistrate with regard to the disposal of the exhibits. It was accepted by the learned Sessions Judge as an appeal but after hearing both sides he came to the conclusion that he was not satisfied that there had been any inquiry or trial in the case, so the order passed could not have been passed under section 517 of the Criminal Procedure Code and therefore in his opinion it was not "a valid and appealable order." He therefore dismissed the appeal on the ground that no appeal lay. It is against this order of dismissal that the present application in revision has been filed.

The first point for decision is whether the learned Sessions Judge had power to deal with the so-called appeal. Strictly speaking, in my opinion, it could not have been an appeal in the proper sense of the word. If the original order had been passed under section 517 then the application to the Sessions Judge would be under section 520. Section 520 is not in the Chapter of the Criminal Procedure Code which deals with appeals, but section 520 gives the Sessions Court in a case of this nature power to "modify, alter or annul"

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the order passed under section 517. This is a statutory right of revision, or, it may be said, of interference with any order passed under section 517 by a Magistrate subordinate to the Court of Session and the applicants merely wanted the Sessions Judge to interfere with the order passed by the Magistrate. If the order was passed under section 517, therefore, the Sessions Judge had power to deal with the application whether this application was strictly an appeal or not. If, therefore, the original order was passed under section 517, the learned Sessions Judge was in error in deciding that he had no power to deal with it.

It is argued before me that as orders can only be passed under section 517 with regard to property when an inquiry or trial in any criminal Court is concluded it must be shown that there was an inquiry or trial before the Court regarding these exhibits and that the inquiry or trial had been concluded. It is argued that as no evidence had been recorded there was no inquiry held, and therefore no inquiry concluded, and reference is made to the case of *U Ba Hlaing* v. *Balabux Sodani* (1) in which it is pointed out that there may be judicial proceedings which are not inquiries or trials, and property produced before the Court in such judicial proceedings cannot be dealt with under section 517 : it must be dealt with under section 523 of the Criminal Procedure Code. The case which gave rise to that report was one in which property had been seized and was made an exhibit in proceedings under section 512 of the Criminal Procedure Code.

In my opinion, however, in the present case it must be held that there had been an inquiry before the Court. The accused and the exhibits were sent up by the police to the Magistrate and he took action under

(1) (1936) I.L.R. 14 Ran. 633.

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section 190 (*b*), and section 190 comes under the Chapter headed "Jurisdiction of Courts in inquiries and trials", and clause (*b*) is one of the conditions requisite for the initiation of proceedings by the Magistrate. Proceedings therefore, in my opinion, had been initiated and although no witnesses had as yet been examined, the proceedings having been initiated, an enquiry must be held to have begun. It was suggested that in any event it had not been concluded and reference was made to *In the matter of Kuppammal* (1). This was a case in which a person had been sent up for trial by the police for an offence under section 406 of the Penal Code. The accused, however, was unable to attend Court and he died before any witnesses had been examined. Sir Arnold White C.J. agreed with the Magistrate that although the preliminary steps for a trial were taken, it could not be said that "the trial has been concluded, the real value of that word in that connection is 'to make a final judgment or determination of.'" It was held that the trial had really abated, but it does not seem to have been suggested that no inquiry or trial had been begun.

Reference was also made to *Brojendra Chandra De* v. *K. S. Sama* (2). That was a case in which a complaint was made of theft and certain property was seized. The complaint was made to the Chief Presidency Magistrate. After the property had been seized it was made over to the complainant. The complainant thereafter took no further steps to prosecute the criminal case but the Court let the property remain in his custody. It seems quite clear that in this case even if an inquiry or trial had started it had not concluded : it had simply been abandoned and the only specific order passed was "Let the car remain with the complainant. File." It seems

(1) (1906) I.L.R. 29 Mad. 375. (2) 35 C.W.N. 198.

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to me quite clear that this was a case in which the proceedings had not concluded in any sense of the word.

In the present case it seems to me that the inquiry had been concluded because the accused had appeared before the Court, the inquiry which comes before the trial proper (which begins when a charge is framed) had been initiated, and the proceedings terminated finally in the discharge of the accused.

Every trial which is concluded before a Magistrate must end either in acquittal, conviction or discharge : any other termination is merely " abatement."

Holding, therefore, as I do that an inquiry had been initiated and had been concluded, the order of the Magistrate with regard to the exhibits was passed rightly under section 517 and therefore the Sessions Judge could deal with the application filed before him under section 520.

I have been asked to pass final orders with regard to the exhibits in revision in any case as the parties do not wish to go back to the learned Sessions Judge for considerations of time, trouble and expense. I am unable to accede to this request. If there are local Courts competent to deal with matters those matters must be dealt with by them : it is not for the High Court to do their work for them.

I, therefore, set aside the order of the learned Sessions Judge holding that he had no power to deal with the application. The proceedings will be returned to him for him to deal with the application and dispose of it on its merits.