CRIMINAL REVISION.

Before Mr. Justice Parsons and Mr. Justice Telang.

IN RE RATANLA'L RANGILDA'S.*

1892. October 17.

Criminal Procedure Code (Act X of 1882), Secs. 517 and 523—Property seized by the police pending an inquiry or trial under a search-warrant issued by the Court —Magistrate's power to deal with such property where no offence is committed.

Section 523 of the Code of Criminal Procedure (Act X of 1882) does not apply to property which is produced before a Court in the course of an inquiry or trial under a search-warrant issued by itself under section 96 of the Code. To such property section 517 alone would apply; and if no offence is found in respect thereof, the Court can make no order. The property must be given back into the possession from which it came.

The scope of section 523 must be confined to property seized by the police of their own motion in the exercise of the powers conferred on them by law, for instance under section 51, 54, 164 or 165 of the Code of Criminal Procedure.

Per TELANG, J.—Under section 523 of the Code of Criminal Procedure a Magistrate is bound to institute an inquiry before making any order touching the right, not of property, but of possession to the property, seized by the police.

APPLICATIONS under section 435 of the Code of Criminal Procedure (Act X of 1882).

The facts of the case were as follows:—One Bái Guláb filed a complaint in the Court of the First Class Magistrate of Surat against Itchárám Rasikdás and Utamrám Itchárám, charging them with criminal breach of trust in respect of certain ornaments and jewellery which had been entrusted to them for sale.

In execution of a search-warrant issued by the Magistrate under section 96 of the Code of Criminal Procedure (Act X of 1882) the police seized certain jewellery which was in the possession of one of the applicants, Ratanlál Rangildás.

The other applicant, Itchárám Valabh, made over to the police, as soon as they appeared with a search-warrant, certain gold ornaments which he alleged had been pledged with him by one of the accused.

The Magistrate, after trying the case, discharged the accused, finding, on the evidence before him, that there had been a trust, but no criminal breach of trust committed by the accused.

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As regards the property produced seized by the police, the Magistrate in the course of the trial, and without holding any inquiry, passed an order, under section 523 of the Code of Criminal Procedure, that it should be delivered to the complainant.

The order was as follows:—

"I now proceed to dispose of the property seized by police under circumstances which create suspicion of the commission of an offence under section 523 of the Criminal Procedure Code. All the property seized is amply proved to belong to complainant, and most of it, especially the jewellery, has been admitted to be complainant's property. I therefore order the whole of the property produced in Court should be restored to the complainant after one month, *i. e.* after the expiry of the period of appeal."

Against this order the applicants, from whose possession the property had been taken by the police, appealed to the Sessions Judge, but he declined to interfere, on the ground that the Magistrate was right in making the order under section 523 of the Code of Criminal Procedure.

Thereupon the applicants applied to the High Court under its revisional jurisdiction.

Ganpat Sadáshiw Ráo for applicants:—Section 523 of the Code of Criminal Procedure does not apply to the present case. It does not apply to property seized by the police under a search-warrant issued under section 96 of the Code. In such a case the seizure by the police need not be reported to the Magistrate, as the seizure is made under his own orders. Section 523 applies only to the cases expressly specified therein. The present is not one of those cases. That being the case, the property should be restored to the persons from whose possession it was taken in the course of the trial—*In re Annapurnabái*[1]; *Queen Empress* v. *Kusa kom Lakshman*[2]; *Queen Empress* v. *Ahmed*[3]. But, assuming that section 523 governs the present case, the Magistrate is bound under the section to make an inquiry as to the person who is entitled to possession before making any order for the disposal of the property. This inquiry has not been made in the present

(1) I. L. R., 1 Bom., 630. (2) Cr. Rul., 24th April, 1884.
(3) I. L. R., 9 Mad., 448.

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case. The Magistrate has ordered the property to be given to the complainant, merely because he finds she is the owner of it. This is clearly wrong. Under the section, the Court has to determine who has the right to the possession of the property. In the present case the right to the possession is vested in the applicants, who have a lien on the property in dispute.

Branson (with him *Nagindás Tulsidás*) for opponent:—The Magistrate was right in ordering delivery of the property to the complainant, who is the owner. She alone is entitled to the possession of the property—*Queen Empress* v. *Joti Rajnak*(1). The ruling in *In re Annapurnabái*(2) was passed under the old Code of Criminal Procedure. Section 523 of the new Code is wider than section 415 or 416 of the old Code. Under the new enactment the Magistrate is at liberty to make an order for delivery of the property to the person he thinks entitled. If section 523 does not apply, then I contend section 517 is applicable. Under both these sections the Magistrate has a wide discretion in making an order for the disposal of property. With that discretion this Court will not interfere in the exercise of its revisional jurisdiction, but will leave the aggrieved party to assert his rights in a Civil Court. Refers to *Queen Empress* v. *Tribhovan*(3).

PARSONS, J:—The facts are these. Bái Guláb brought a charge of criminal breach of trust against certain persons. The Magistrate to whom the complaint was made, issued search-warrants under section 96 of the Code of Criminal Procedure (X of 1882) and the property now in question was found in the possession of the applicants and produced before the Magistrate. The Magistrate, though the persons in whose possession the property was found were not the accused persons and though he found that no offence had been committed regarding it, ordered it to be delivered to the complainant. He held no independent inquiry, and he does not find that the complainant was entitled to the possession, but merely that she is the owner, of the property.

The first point that arises is whether his order was made with jurisdiction? For if it was not, we are bound to interfere and set it aside; whereas if it was, other points may have to be con-

(1) I. L. R., 8 Bom., 338. (2) I. L. R., 1 Bom., 630. (3) I. L. R., 9 Bom., 131.

sidered. The order was not and could not have been made under section 517 of the Code, but it is sought to be supported under section 523, under which section it purports to be made. In my opinion, this section is in no way applicable. It cannot, I think from its very words, be held to apply to property which is produced before a Court in the course of an enquiry under a search-warrant issued by that Court. Its scope must be confined to property seized by the police of their own motion, in the exercise of powers conferred on them by law, and which seizure requires to be reported to a Magistrate, since otherwise the Magistrate would have no knowledge of it. For instance, the seizure of articles found on an arrested person searched under section 51, the seizure under section 54 (4) of property suspected to be stolen or with which an offence is suspected of having been committed, the seizure of property under section 165 or under a search-warrant issued under section 165 or section 166 would have to be reported. But there would be no necessity to report the seizure of property found under a search-warrant issued by a Magistrate, since, by the terms of the search-warrant itself, the property has to be placed before the Magistrate. Section 523 is silent as to any such property. Strictly speaking, section 517 and section 523 cannot both apply to the same property. Section 517 ought to apply to all property produced before a Court in an inquiry or trial, while section 523 would apply to property not so produced, but still in the possession of the police who had seized it, but to whom the Legislature did not see fit to entrust the disposal thereof, and so conferred that power on the Magistracy alone. The Calcutta High Court has ruled apparently that section 523 does not apply to any property which has been the subject of a criminal trial (Ruling of September 7th, 1885, quoted in Prinsep's 9th edition of Criminal Procedure Code, page 358). I will not, however, go so far as that. It is unnecessary to do so in the present case, and possibly, I think, at the end of an enquiry or trial, there might be some property seized by the police to which section 523 might apply. Our criminal ruling (No. 7: *Imperatrix* v. *Gopála*) of 12th February, 1891, appears to imply that. I have no doubt that section 523 can have no application to property produced in the course of an

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enquiry or trial before a Court under a search-warrant issued by itself. To such property section 517 alone would apply, and if no offence is found in respect thereof, the Court can make no order; it must be given back into the possession from which it came. I find, therefore, that the order was made without jurisdiction, and my learned colleague agrees with me. We, therefore, reverse the order of the Magistrate respecting the property in the case in question. The effect of this will be that the property must be restored to the possession of those persons who gave it up, or from whom it was taken.

Telang, J.:—These were applications made in the extraordinary jurisdiction of this Court for the purpose of obtaining revision of certain orders for the custody of property made by the First Class Magistrate of Surat under section 523 of the Criminal Procedure Code. The principal prosecution in which the question regarding the property in dispute arose was one instituted by Bái Guláb against Itchárám Rasikdás and Utamrám Itchárám for criminal breach of trust, and the Magistrate being of opinion that though a trust was proved, a dishonest breach of it was not proved, discharged the accused persons. The applicant in the first of these cases was the partner of one of the accused persons, and the property in question on his application was found by the police in the course of a search held under a search-warrant granted by the Magistrate in accordance with the provisions of section 96 of the Code of Criminal Procedure. In the second case the applicant was the pledgee of certain articles of jewellery from a person to whom they had been pledged by one of the accused persons. The complainant had applied to the Magistrate for a search-warrant as regards him also, but the order of the Magistrate was that he should in the first instance be asked to hand over the things, and in the event of his refusal the search-warrant should be executed. The applicant, it was stated before us, produced the things to the police on their demanding the same, and they went in due course to the Magistrate's Court. Under these circumstances the Magistrate ordered that the various articles and things taken from the possession of the applicants should be handed over to the complainant, Bái Guláb, and he made the order under the provisions of section 523.

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I am of opinion that section 523 has no application to such a case as the present. Comparing the provisions of that section with those of section 96 and other sections of the Criminal Procedure Code, I am of opinion that section 523 only deals with cases in which the police seize property, as they are in some cases authorised to do, by virtue of their own powers, and not in carrying out any order of a Magistrate. The general nature of the provisions of that section coupled with the specific provision for a report to a Magistrate points, I think, most strongly to a seizure by the police of their own authority. The seizures in the present cases were clearly not of that character. That in the case of Ratanlál was under a search-warrant granted by the Magistrate under section 96, which contains its own special enactment as to the nature of the proceeding to be taken before the Magistrate on the finding of the property under the warrant. That in the case of Itchárám Valabh was also a seizure under the order of the Magistrate made apparently under section 94 of the Code. In both cases I think the section 523 under which the Magistrate professed to act, was inapplicable.

But it was said that section 517 in any event afforded adequate authority for the order made by the Magistrate. I do not, however, perceive how section 517 could be applied to the case. That section, in terms, deals with property in respect of which an offence may appear to have been committed. In this case the Magistrate by discharging the accused on the ground that no criminal breach of trust had been proved to his satisfaction must be taken clearly to have found that no offence had been committed. Mr. Branson argued that the Magistrate's finding was illogical, and that one could see from his judgment that he thought the accused had not dealt properly with the complainant. I do not think, however, that there is anything necessarily illogical in the judgment of the Magistrate. He apparently seems to have thought that the accused had not dealt properly with the complainant, but that their acts amounted not to a criminal offence but to a civil wrong. But in any event it is plain, I think, that the property in this case cannot be treated as property in respect of which an offence appears to have been committed,

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because the only persons charged or chargeable with the offence have, in fact, been discharged, and that finding which we have already refused to disturb is, while it stands, equivalent to a finding that no offence has been committed.

It was, however, further argued by Mr. Branson that, even if neither section 523 nor section 517 applied to these cases, this Court should not now interfere in its revisional jurisdiction, as there is a remedy open to the aggrieved parties in the Civil Courts. But that principle has not, that I am aware of, been applied in the form thus indicated in criminal or *quasi*-criminal proceedings. It has been applied to some extent in cases coming under section 622 of the Civil Procedure Code. But the present proceedings, though dealing with questions of possession of property and, therefore, in their nature perhaps of a civil rather than a criminal nature, are nevertheless not to be disposed of under section 622 of the Civil Procedure Code. Besides, it may be that the Court ought to apply different principles of interference in revision where a Subordinate Court deals with matters which lie within its habitual jurisdiction and where such a Court deals summarily with matters entrusted to it by the Legislature for special reasons and under special circumstances. In this case, however, the matter appears to me to be one which specially calls for interference. The only section under which it can be said that the Court had any authority to make such an order as it has here made, has been shown to be inapplicable. And it, therefore, was the duty of the Court to apply the general rule laid down in *In re Annapurnábái* [1], there being no scope under the law for the exercise of any judicial discretion by the Magistrate in such a case. If there had been a discretion to be exercised, we should probably have been disinclined to interfere with its exercise by the Court below, although it is to be remarked that in these cases there would have been one strong circumstance in favour of interference even from that point of view, *viz.* that the Magistrate did not lay the basis for the orders he has made in any specific investigation such as he ought to have instituted before making those orders touching the rights *not* of

(1) I. L. R., 1 Bom., 630.

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property but of possession claimed by the applicants, who were, in the eye of the law, strangers to the criminal proceedings tried by him. But however that may be, these cases being, as I have pointed out, not of the classes contempleted by sections 523 and 517 and there being, therefore, no provision of the law authorising the Magistrate to depart from the general rule, that property taken under the authority of the law for a particular purpose should on the fulfilment of that purpose go back to the custody whence it was taken. I think the Magistrate had no jurisdiction to do otherwise than direct the restoration of the several articles and things to the persons in whose possession they were respectively when seized under his orders. I may perhaps add one word more in regard to Mr. Branson's argument. It may be, though there is no evidence to enable this to be found with certainty, that in this particular case the applicants might not sustain any actual damage by having to sue in a Civil Court to establish their civil rights to the property in question. But one can well conceive cases in which great and even irreparable harm may result from the actual custody of property being lost in this way. And it would not be safe, therefore, to lay down any such general rule as was indicated in Mr. Branson's argument. Upon the whole I have come to the conclusion that the order of the Court below must be reversed.

Order reversed.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Candy.

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NABA'B MIR SAYAD A'LAMKHA'N (ORIGINAL DEFENDANT No. 1), APPELLANT, *v.* YA'SINKHA'N AND OTHERS, (ORIGINAL PLAINTIFFS), RESPONDENTS.*

Adverse possession—Manager during minority—Limitation Act (XV of 1877), Sch. II, Arts. 91 *and* 144.

The plaintiffs sued to recover lands which they claimed as their own and of which they alleged the defendant to have had the management during their minority, he having been appointed manager of all their (the plaintiffs') property by their mother and grandmother, who were dead at the date of suit. The defendant alleged that the land in question had been sold to him, and produced a deed of sale, dated 3rd October, 1876, purporting to have been executed by the deceased

* Second Appeal, No. 559 of 1891.