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DAMODAR
v.
RAGHUNATH.*Daji Abaji Khare* for the applicant (plaintiff).

FULTON, J. :—We agree with the decision of the Allahabad High Court in *Chattar Singh v. Lekhraj Singh*⁽¹⁾ and hold that an order under section 521, Civil Procedure Code, setting aside an award made under Chapter XXXVII of the Code on a reference to arbitration in the course of a suit, on the ground of the arbitrators' misconduct, is not subject to revision under section 622. The order complained of is interlocutory and, if erroneous, may form a ground of appeal against any decree that may be passed in the suit. We must, therefore, reject the application.

Application rejected.

(1) (1883) 5 All. 293.

CRIMINAL REVISION.

Before Mr. Justice Cundy and Mr. Justice Fulton.

IN THE MATTER OF LAKSHMAN GOVIND NIRGUDE.

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April 2.

Criminal Procedure—Procedure in Magistrate's Court—Information filed against an accused, but no summons issued—Case must be disposed of by Magistrate although no summons applied for by complainant—Search warrant—Property seized by police under warrant—Claim by third party—Inquiry by Magistrate as to claim of third party—Criminal Procedure Code (V of 1898), section 593.

Where an information is filed against a person, the Magistrate is bound to dispose of the case, and if no evidence is offered against the person accused, he must be discharged. The complainant, by omitting to take out a summons against such person, cannot keep a charge hanging over him for an indefinite time. The summons is merely the means of procuring the attendance of the accused, but if he appears of his own accord without a summons, he is entitled to require that the complaint shall either be proceeded with or dismissed.

Where property is seized under a search warrant, the Magistrate must proceed to make enquiry so as to enable him to dispose of it. If a third party appears and alleges that the property seized is his and is not the subject-matter of the offence charged, the Magistrate is bound to hear that party, and, if necessary, restore the property to its owner.

* Criminal Application for Revision, No. 21 of 1902.

Magistrates must take care that the proceedings in their Courts are conducted with such reasonable expedition as will prevent the parties from being improperly harassed by undue delay.

In re Ratanlal Rangildas⁽¹⁾ doubted.

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APPLICATION under section 435 of the Criminal Procedure Code (Act V of 1898) for revision of an order made by J. S. Dracup, Fourth Presidency Magistrate of Bombay.

The petitioner, against whom an information had been lodged on the 9th September, 1901, had applied to the Magistrate to have the case against him proceeded with. The Magistrate, however, declined on the ground that no process had been issued against the petitioner.

The petitioner accordingly applied to the High Court under section 435 of the Criminal Procedure Code, contending that the Magistrate was bound to dispose of the case against him. He also prayed that certain printing materials belonging to him which had been seized under a search warrant issued against his brother should be restored to him (the petitioner).

The facts of this case were as follows :

On the 9th September, 1901, the complainant, Mrs. Graham, filed an information charging the petitioner Lakshman Govind and his brother Pandurang Govind with criminal breach of trust and criminal misappropriation in respect of certain printing materials of the value of Rs. 2,000.

On the same date the Magistrate ordered the issue of a summons against the accused and a search warrant for the seizure of the property mentioned in the information ; but as the complainant only paid the process fee for the process against Pandurang Govind Nirgude and failed to pay the fee for the summons against the petitioner Lakshman, no process was issued against him.

The search warrant was issued on the 12th September, 1901, and executed on the 17th September, on which day the property was produced before the Magistrate.

On the 10th October, 1901, the date fixed for the hearing of the case, complainant did not appear, and the case was struck

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off, and the property seized under the search warrant ordered to be returned to the persons in whose possession it was found. This person was admittedly the petitioner Lakshman.

On the same day the petitioner Lakshman appeared in Court and applied that the complainant should be compelled to go on with the case against him, but as no process had been taken out against him and the case had been struck off owing to the absence of the complainant, the Magistrate considered himself unable to comply with the request.

On the 27th November, 1901, the complainant, Mrs. Graham, again appeared before the Magistrate and applied that the case against Pandurang Govind should be restored to the file, and that a fresh search warrant should issue. The Magistrate granted both applications.

The second search warrant was executed on the 30th November, 1901, and the property was produced before the Magistrate the same day.

The petitioner Lakshman again appeared before the Court and requested that the case against him should be proceeded with; but as the complainant had applied for the restoration of the case against Pandurang Govind only, the Magistrate declined to comply with the petitioner's request.

The case against Pandurang Govind Nirgude was not proceeded with as he absconded from Bombay and the warrant issued against him could not be executed.

The petitioner now applied to the High Court, contending (*inter alia*) that the Magistrate was bound to dispose of the case against him and praying that the printing materials, which the petitioner alleged belonged to him, should be restored to him.

Kolah (with him *R. R. Desai*) for the petitioner.

C. J. Ashbury and *G. S. Mulgaonkar* for the opponent.

CANDY, J.:—On the 9th September, 1901, Mrs. Graham filed an information in the Court of the Fourth Presidency Magistrate (headed as against one Pandurang) for criminal breach of trust in respect of certain printing materials. In the body of the information "two accused" were named, viz., Pandurang and his brother Lakshman.

The Magistrate endorsed the information "summons and search warrant."

A search warrant was issued requiring the police to search for the said articles in the house or shop of Pandurang. Accordingly six boxes of printing materials were seized. The Magistrate says that complainant paid process fee for process against Pandurang only and so no process was issued against Lakshman.

On the date fixed, 10th October, complainant did not appear. In the record under section 370, Criminal Procedure Code, in the column "name of accused" Pandurang only is mentioned.

In the column "final order" the entry is "P. A. S. O. (petitioner absent, struck on)—property to be returned to the person in whose possession it was found." This person was admittedly Lakshman.

On 27th November, Mrs. Graham petitioned the Magistrate that her information should be restored to the file and that a fresh search warrant should issue.

This was endorsed by the Magistrate on 27th November "Case ordered to be restored and a search warrant to issue."

On the same day a search warrant was issued requiring the police to search for the above-mentioned articles in the house or shop of Pandurang. Six boxes were again seized and brought before the Magistrate.

On 21st January, 1902, the Magistrate endorsed the record under section 370 "S. S. N. P. Warrant. Bail Rs. 1,000. Returnable on 6th February, 1902."

A warrant was accordingly issued for the arrest of Pandurang, but it has not been executed, as Pandurang has admittedly left Bombay.

The case against Pandurang stands adjourned in the Magistrate's Court.

Lakshman, with his counsel, appeared before the Magistrate, both on 10th October, 1901, and again after the case had been restored to the Magistrate's file, begging that the case against him should be proceeded with. The Magistrate declined, on the ground that no process had been issued against Lakshman.

Lakshman has now applied to the High Court, complaining that the Magistrate was bound to dispose of the case against him, and

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further that the printing materials which have been seized belong to him (the applicant), and that the Magistrate has no right to detain them for an indefinite time.

The first point presents no difficulty. Counsel who appears for Mrs. Graham admits that his client has no intention to prosecute Lakshman, and that she is willing that the case against him should be formally struck off.

It is not understood how the Magistrate required process fee for issue of process in a complaint of criminal breach of trust.

When the record is returned to the Magistrate, he should call on the case against Lakshman and formally dispose of it. The fact that Mrs. Graham did not take out process against Lakshman is no valid reason for the Magistrate allowing the charge of criminal breach of trust to hang over him.

The case of the printing materials is different.

On the one hand, Lakshman asserts that he is separate in estate from his brother Pandurang, that those materials belong to him and form no part of the materials entrusted to Pandurang by the late Mr. Graham, and that he suffers considerable injury by the detention of these materials by the Magistrate for an indefinite period. On the other hand, Mrs. Graham, by her counsel, alleges that these materials are part of the materials entrusted by the late Mr. Graham to Pandurang, that the brothers are united, and that if the materials are restored to Lakshman they will be made away with, and she will suffer considerable injury.

Under these circumstances Lakshman's counsel ask us to cancel the search warrant issued by the Magistrate and to order the restoration to his client of the printing materials, or at any rate to direct the Magistrate to make some inquiry, so that the printing materials which Lakshman says belong to him and have no connection with the alleged offence may not be detained for an indefinite period in the Magistrate's Court.

I am of opinion that it is not open to us to cancel the search warrant. The Magistrate in the exercise of his discretion considered that the production of the printing materials, as the alleged subject of the original breach of trust with regard to which the information had been laid, was necessary or desirable. He had reason to believe that Pandurang would not produce

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them if required by a summons. He therefore issued a search warrant. But if a third party appears before the Magistrate and alleges that the things seized by the police under the search warrant are his property and are not the subject of the alleged criminal breach of trust, the Magistrate is, in my opinion, bound to hear that party and, if necessary, to restore the things to their owner. I base that opinion not on the provisions of section 523, Criminal Procedure Code, for I am not prepared to differ from the ruling of this Court in the case of *Ratanlal Rangildas*⁽¹⁾ as to the inapplicability of that section to property produced under a search warrant under section 96.

But there is, in my opinion, a power inherent in every Court to satisfy itself that the things produced before it under a search warrant are the things which it is necessary or desirable should be kept in its custody.

I have no doubt that the Magistrate was wrong in refusing a *locus standi* to Lakshman, declining to hear him as to his alleged ownership of the things which had been seized.

With the above directions I would return the record and proceedings to the Magistrate.

FULTON, J.:—I entirely concur in the order proposed by my learned colleague. Lakshman was included in the complaint of the 19th September and must be formally discharged if no evidence is offered against him. A complainant, by omitting to take out a summons, cannot keep a case hanging over a man for an indefinite time. The summons is merely a means of procuring attendance, but if the accused appears of his own accord without a summons, he is entitled to require that the complaint shall either be proceeded with or dismissed.

As regards the property which has been seized under the Magistrate's warrant, I am inclined to doubt the correctness of the decision in *In re Ratanlal Rangildas*.⁽¹⁾ I think the words "seized by the police" apply equally whether the seizure is made under a Magistrate's warrant or without a warrant. I do not think the word "seized" can be limited in the way proposed in that decision. In the one case as in the other the seizure is

(1) (1892) 17 Bom. 746.

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made under the authority of some law requiring the police to execute the warrant or empowering them to seize property without warrant. In both cases the seizure must forthwith be reported to the proper Magistrate, who can then, according to my view, proceed in the manner prescribed by the section. It is obvious that when property is seized under a Magistrate's warrant, he must proceed to make inquiry to enable him to dispose of it. Otherwise grave wrong would result.

Here, on an information, property has been seized and kept apparently without any inquiry for nearly five months, though Lakshman has throughout been insisting that it is his own. As no one can say when Pandurang may return, the detention may last for an indefinite time. Whether the inquiry is made in the exercise of inherent powers or, as I think, under the authority given by section 523, I entirely agree with Mr. Justice Candy in holding that immediate inquiry should be made in order to ascertain whether there is sufficient ground for believing that the property belongs to the complainant and has been the subject of criminal breach of trust or dishonest misappropriation, or should be returned to Lakshman from whose possession it has been taken, on such terms as the Magistrate may prescribe. Magistrates must take care that the proceedings in their Courts are conducted with such reasonable expedition as will prevent the parties from being improperly harassed by undue delay.

CRIMINAL REVISION.

Before Mr. Justice Fulton and Mr. Justice Crowe.

EMPEROR *v.* LAKSHMAN RAGHUNATH.*

1902.

April 10.

*Penal Code (Act XLV of 1860), sections 441, 448—Criminal trespass—
House-trespass—Entry into house—Intent to annoy.*

The accused No. 1, who held a decree against a certain judgment-debtor, went with his son, accused No. 2, and a Civil Court bailiff to execute a warrant. Finding the door of the judgment-debtor's house shut, they entered his compound by passing through the complainant's house without his consent and notwithstanding his protest.

* Criminal Application for Revision No. 29 of 1902.