

CRIMINAL REVISION.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

*IN RE LAXMAN RANGU RANGARI.**

1911.

February 9.

Criminal Procedure Code (Act V of 1898), section 520—Magistrate—Order as to disposal of property—On appeal to the Sessions Court the order left untouched—Application to the District Magistrate to revise the order—Jurisdiction—Notice to the other side—Practice.

In trying a case of theft, a Magistrate of the First Class convicted the accused and passed an order disposing of the property produced before him. The Sessions Court, on appeal, confirmed the conviction, but left untouched the order as to the disposal of property. An application was then made to the District Magistrate to raise the order; and he varied it without issuing notice to the other side :—

Held, reversing the order, that the terms of section 520 of the Criminal Procedure Code did not give any jurisdiction to the District Magistrate to interfere; and that he could only interfere as a Court of Revision where there had been no appeal to the Sessions Court.

Held, also, that the District Magistrate ought not to have disposed of the matter without giving notice to the other side.

THIS was an application to revise an order passed by A. F. Maconochie, District Magistrate of Nasik, under section 520 of the Criminal Procedure Code, 1898.

The order in question was passed under the following circumstances.

One Laxmibai filed a complaint of theft against three persons, Magniram, Dinalal and Lalji, in the Court of the First Class Magistrate of Vinchur. The theft was of some ornaments belonging to Laxmibai. Lalji committed the theft and gave the ornaments to Magniram, who melted them and sold a portion of the ingot (about six tolas in weight) to a goldsmith Nagoo. Nagoo mixed this gold with some gold of his own and made a *kada* (wristlet), which he sold to Laxman Rangu (the petitioner).

The Magistrate convicted and sentenced the accused. As regards the property produced before him, he ordered that the *kada*

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should be restored to Laxman Rangu and the remaining ornaments to Laxmibai.

The Sessions Judge of Nasik, on appeal, confirmed the conviction and sentence; and did not interfere with the order as to the disposal of property.

The complainant next applied to the District Magistrate of Nasik, under sections 435 and 520 of the Criminal Procedure Code, to revise the order as to the disposal of property. The District Magistrate, without issuing any notice to the other side, passed the following order: "The *hada* should be broken up or melted and six tolas in weight of it given to the complainant Laxmibai."

The petitioner Laxman applied to the Sessions Judge at Nasik, but he rejected the application on the ground that as the District Magistrate as a Court of Revision was a Court of co-ordinate jurisdiction with his Court, he had no jurisdiction to revise the order.

The petitioner applied to the High Court under its criminal revisional jurisdiction.

Nilkantha Almaram for the applicant.

R. R. Desai for the complainant.

G. S. Rao, Government Pleader, for the Crown.

CHANDAVARKAR, J.:—The District Magistrate had no jurisdiction to deal with this matter after there had been an appeal in the Sessions Court and after that Court had confirmed the conviction and sentence. The terms of section 520 of the Criminal Procedure Code, 1898, do not give any jurisdiction to the District Magistrate under the circumstances of this case. The Court of Revision such as that of the District Magistrate can only interfere where there was no appeal to the Sessions Court. Here there was an appeal to the Sessions Court and the Sessions Court did exercise its jurisdiction. And further, even if the District Magistrate had jurisdiction, he ought not to have disposed of the matter without giving notice to the petitioner. The District Magistrate was clearly wrong in upsetting the order of the trying Magistrate merely on the representation of the opponent. Therefore, the rule must be made absolute

by setting aside the order of the District Magistrate and restoring that of the trying Magistrate.

HEATON, J.:—I concur in the order proposed. This is a case which, it seems to me, is governed by section 520 of the Code of Criminal Procedure. That section, to my mind, is perfectly clear and its meaning is this: that where the case is one in which an appeal lies, any party aggrieved by an order as to the disposal of the property must go to the Court of appeal. Where the case is one where confirmation is required, he must go to the Court of confirmation; where it is neither the one nor the other, he may go to the Court of reference or revision. Here the case is one in which an appeal lay, and, therefore, it seems to me that the only Court which could deal with the order regarding the disposal of the property under section 520 is the Court of appeal; in this case the Court of Session. Therefore the order made by District Magistrate was made without jurisdiction.

Order set aside.

B. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

THE COLLECTOR OF AHMEDABAD (ORIGINAL APPLICANT), APPELLANT,
v. LAVJI MULJI (ORIGINAL OPPONENT), RESPONDENT.*

1911.

February 9.

Civil Procedure Code (Act V of 1908), section 144—Decree—Interest, award of—Discretion of Court—Land Acquisition Act (I of 1894)—Court determining the amount of compensation—Payment of the amount to claimant—Subsequent reduction in amount on appeal—Interest over the excess—Inherent powers of the Court.

A sum of money by way of compensation awarded under the Land Acquisition Act (I of 1894) and paid into Court was taken out by the claimant. Subsequently on appeal, the High Court reduced the amount of compensation payable to him, but made no order as to interest. Government then applied to recover from the claimant interest over the excess drawn by the claimant from the Court.

* First Appeal No. 150 of 1910.