

1915.

MANILAL
GANGADAS
v.
SECRETARY
OF STATE
FOR INDIA.

the liability of his heirs. It appears to me that the only question to be determined here is whether defendant No. 10 was rightly made liable by the decree. The position of his heirs under that liability would be a matter for consideration in execution. It is not, in my opinion, a matter for decision on appeal from the decree. This would appear to be the view taken in the case of *Paramen Chetty v. Sundararaja Naick*⁽¹⁾.

It is not necessary in view of my conclusions on the foregoing points to consider the argument addressed to us upon the application of section 179 of the Bombay District Municipalities Act of 1901 and the question of the substitution of the Municipality under Order XXII, Rule-10, as a party in place of the Government.

The learned District Judge's decree ought, therefore, in my opinion, to be confirmed and this appeal to be dismissed with costs.

Appeal dismissed.

R. R.

CRIMINAL REVISION.

1915.

September 1.

Before Mr. Justice Batchelor and Mr. Justice Hayward.

IN RE PANDHARINATH PUNDLIK REVANKAR.*

Criminal Procedure Code (Act V of 1898), section 517—Order as regards disposal of property—Discretion in making orders to be judicially exercised—Currency note—Property passes by delivery.

The accused stole a currency note, which he offered to a goldsmith as price for gold ornaments purchased by him. The goldsmith not having had sufficient cash, got the note cashed by a neighbouring shop-keeper (applicant), who cashed it in good faith. At the trial of the accused, the note was

(1) (1902) 26 Mad. 499.

* Criminal Application for Revision No. 214 of 1915.

attached from the applicant. The accused was convicted of criminal breach of trust of the currency note which belonged to Government; and the note was ordered to be delivered to the Crown. The applicant having applied :—

Held, that as property in a currency note passed by mere delivery, the applicant had obtained a good title to the note notwithstanding that the accused had no title.

The Collector of Salem ⁽¹⁾ and *Empress v. Joggessur Mochi* ⁽²⁾, followed.

Orders under section 517 of the Criminal Procedure Code (Act V of 1898) are discretionary, but the discretion is open to correction where it has been exercised in violation of accepted judicial principles.

THIS was an application from an order passed by G. R. Khairaz, Fourth Presidency Magistrate of Bombay.

The accused Peter George was the Judicial Clerk in the Court of the Second Presidency Magistrate of Bombay. In his official capacity he came into possession of property which consisted of Government currency notes and cash. He abstracted nine currency notes of the value of Rs. 100 each.

The accused purchased gold ornaments from a goldsmith and tendered in payment one of the one-hundred rupees notes which he had stolen. The goldsmith had not sufficient money to cash the note. He accordingly took it to a neighbouring shop-keeper (applicant) who cashed it in good faith.

In the course of the investigation against the accused, the note was attached by the Police from the custody of the applicant. The accused was duly convicted and sentenced. The trying Magistrate, however, ordered the currency note to be delivered to the Crown.

The applicant applied to the High Court against the order as to disposal of property.

⁽¹⁾ (1873) 7 Mad. H. C. R. 233.

⁽²⁾ (1878) 3 Cal. 379.

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A. A. Pais, for the applicant.

S. S. Pathkar, Government Pleader, for the Crown.

BATCHELOR, J:—This is an application for revision of an order passed under section 517 of the Criminal Procedure Code by the learned Fourth Presidency Magistrate who convicted one Peter George of criminal breach of trust in respect of a bundle of currency notes and ordered that one of the notes now in dispute should be returned to the Crown, the notes having been misappropriated from the Presidency Magistrate's Court. The note now in dispute had been transferred to the possession of the present petitioner in this way : Peter George made a purchase from a neighbouring jeweller and tendered in payment the Rs. 100 note. The neighbouring jeweller was unable to cash the note at the moment, and therefore took it over to the present petitioner who supplied the cash. There is no allegation of any bad faith or fraud on the part of the present petitioner. That being so, it seems to us a case for the application of the general rule that property in a currency note passes by mere delivery : see the case of *The Collector of Salem* ⁽¹⁾ and *Empress v. Joggessur Mochi* ⁽²⁾. The petitioner consequently obtained a good title to the note, notwithstanding that Peter George had no title. The order under discussion is, therefore, in our opinion, unsustainable. It is true that orders under section 517 of the Criminal Procedure Code are discretionary, but the discretion is open to correction where, as here, it has been exercised in violation of accepted judicial principles.

We, therefore, set aside the order and direct that the currency note be returned to the petitioner.

Order set aside.

R. R.

(1) (1873) 7 Mad. H. C. R. 233.

(2) (1878) 3 Cal. 379.