

examined in connection with the surrounding circumstances to ascertain whether it has been signed to supply evidence of a debt."

The result is that the decree of the Lower Appellate Court is set aside, and the case remanded to that Court in order that it may be disposed of in accordance with the directions contained in this judgment.

The costs of this appeal will abide the result.

*Appeal allowed; case remanded.*

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30 C. 690 (=7 C. W. N. 634.)  
[690] CRIMINAL REVISION.

SURENDRA NATH SARMA v. RAI MOHAN DAS.\*  
[10th March, 1903.]

*Appeal—Restoration of property, order for—Criminal Procedure Code (Act V of 1898) ss. 517, 520.*

An order by a Magistrate directing the restoration of property, in respect of which no offence has been found to have been committed, to the person in whose possession that property was found, is not an order under s. 517 of the Code of Criminal Procedure and is therefore not open to appeal.

*Basudeb Surma Gossain v. Nasiruddin (1), In re Annapurnabai (2) and In re Devidin Durgaprasad (3) referred to*

[*Distt. 34 Cal. 347=5 Cr. L. J. 48=5 C. L. J. 44. Dist. 9 C. W. N. 549=2 Cr. L. J. 269. Ref 42 M. 9=24 M. L. T. 256=49 I. C. 167.*]

RULE granted to the petitioner, Surendra Nath Sarma.

This was a Rule calling upon the Deputy Commissioner of Sylhet to show cause why the order of the Sessions Judge of Sylhet dismissing the appeal of the petitioner should not be set aside and the appeal directed to be heard on the merits.

It appears that the petitioner was the worshipper of the idol *Syam Sundar* in the possession of one Kunjamoni Dassi. The accused Rai Mohan Das was the elder brother of Kunjamoni's deceased husband. Both the accused and Kunjamoni applied for Letters of Administration to the estate of the accused's father Jasmanta, which estate has been dedicated to the idol. While this matter was pending in the High Court, the accused went with a number of men to Kunjamoni's house, and having stated that the High Court had decreed the matter in his favour and that the idol was to be made over to him, compelled the petitioner by threats to carry the idol to his (the accused's) house.

[691] The accused was tried under ss. 384 and 417 of the Penal Code by the Assistant Commissioner of Sylhet, who on the 1st December 1902 acquitted the accused and directed:—

"That the idol, with its appurtenances, be delivered with the help of the police to Rai Mohan Das in whose possession it was found."

The petitioner appealed against that order to the Sessions Judge of Sylhet, who having held that the order was not one passed under s. 517 of the Criminal Procedure Code and that no appeal lay, dismissed the appeal on the 5th January 1903. Thereupon the petitioner moved the High Court and obtained this Rule.

*Mr. P. L. Roy (Babu Surendra Nath Ghosal with him) shewed cause. The Sessions Judge was right in holding that there was no appeal against*

\* Criminal Revision No. 65 of 1903, against the order of H. L. Thomas, Assistant Commissioner of Sylhet, dated Dec. 1, 1902.

(1) (1887) I. L. R. 14 Cal. 834.

(3) (1897) I. L. R. 22 Bom. 844.

(2) (1877) I. L. R. 1 Bom. 630.

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the order of the Assistant Commissioner. That order was not passed under s. 517 of the Code of Criminal Procedure, because the Assistant Commissioner held that no offence was committed in respect of the idol. That being so, the Assistant Commissioner was right in directing that the idol should be delivered to the accused, as the Courts are bound on general principles to restore property under such circumstances to the person from whom it is taken, and in this case the police originally found the idol in the possession of the accused from whom it was taken under the order of the Assistant Commissioner: see *In re Annapurna-bai* (1), *Fateh Chand v. Durgaprasad* (2), *In re Devidin Durgaprasad* (3).

Babu *Dasarathi Sanyal* for the petitioner. The Sessions Judge is wrong in holding that he had no jurisdiction to hear the appeal. The order was passed under s. 517 of the Code of Criminal Procedure, and under s. 520 the Judge being the Court of Appeal could alter or annul such an order. The Sessions Judge has erroneously refused to exercise his jurisdiction. The idol was practically in the custody of the Court, because the Magistrate who entertained the complaint passed a provisional order delivering the idol to the petitioner on his giving security, and directing him to produce it before the Court whenever he should be called upon to do so. The idol was not a thing which could be physically in the custody of the Court, as its worship had to be continued. [692] Although the Assistant Commissioner acquitted the accused, he at the same time found that the idol was taken from the custody of the petitioner on the strength of some misrepresentation made to him by the accused. The cases cited by Mr. Roy are not applicable to the facts of the present case. There is a further point to be considered. The Magistrate who entertained the complaint passed an order making over the idol to the petitioner, and his successor had no jurisdiction to review such order or to rescind it. I submit the Rule should be made absolute.

HARINGTON AND BRETT, JJ. In this case a Rule was issued calling upon the Deputy Commissioner of Sylhet to show cause why the order of the Sessions Judge dismissing the appeal of the petitioner should not be set aside and the appeal directed to be heard on the merits.

Having heard the learned counsel and the learned pleader on both sides, we are of opinion that the Rule must be discharged. The order complained of which was passed by the Magistrate was clearly an order directing the restoration of property in respect of which no offence had been committed to the person in whose possession that property was found. It has been held by this Court and by the Bombay High Court in the cases of *Basudeh Surma Gossain v. Naziruddin* (4), *In re Annapurnabai* (1) and *In re Devidin Durgaprasad* (3), that such order is not an order passed under section 517 of the Code of Criminal Procedure. Such an order therefore is not open to appeal, and the Sessions Judge was right in dismissing the appeal on the ground that no appeal lay in this case.

We therefore direct that the Rule be discharged.

*Rule discharged.*

(1) (1877) I. L. R. 1 Bom. 630.  
(2) (1897) 1 C. W. N. 435.

(3) (1897) I. L. R. 22 Bom. 844.  
(4) (1887) I. L. R. 14 Cal. 884.