

Smt. Dhanwanti And Ors. vs State Through Khan Bahadur Shafi Ali ... on 5 March, 1954

Equivalent citations: AIR1955ALL63, 1955CRILJ192, AIR 1955 ALLAHABAD 63

ORDER

Asthana, J.

1. Chhitariya along with three other persons was sent up for trial under Section 457, I.P.C., in respect of certain property. Chhitariya died during the pendency of the inquiry before the Magistrate and so far as he was concerned the case abated against him. The other three accused were discharged under Section 253 (1), Cr. P. C. After their discharge the property which was alleged to have been recovered from, the possession of Chhitariya deceased along with some other property was ordered to be returned to the complainant. Bhupali and Thakuri, sons of Chhitariya, and Srimati Dhanwanti his widow, filed a revision against this order before the Sessions Judge, Aligarh.

Their contention was that as the case against Chhitariya had abated the property which had been recovered from his possession should have been restored to them as they were his legal heirs. The learned Sessions Judge confirmed the order of the Magistrate in respect of the property mentioned in Ex. P4. He, however, set aside the order of the learned Magistrate with regard to the property in Ex. PG which was alleged to have been recovered from the possession of Chhitariya and directed that this property would remain in possession of the court till its ownership was decided by a competent civil court and the rightful person was forthcoming to claim it. It is against this order that the present revision has been filed in this Court.

2. It was contended on behalf of the applicants that the case having abated against Chhitariya and there being no finding that the property mentioned in Ex. P6 which had been recovered by the police from his possession was stolen property or was the property in respect of which the offence had been committed it should have been returned to his legal heirs who were entitled to it. It was also contended that the learned Magistrate had no power to act under Section 517, Cr. P. C., as that section empowered the Magistrate to act only in those cases where the inquiry pending before him had concluded and as in this case Chhitariya died during the pendency of the case it cannot be said that the inquiry had concluded as contemplated in this section. It was argued that the word "concluded" did not cover those cases where the inquiry had come to an end on account of the death of the accused.

In support of this contention reliance was placed on -- 'In the matter of Kuppammall', 29 Mad 375 (A). In this case the accused was charged with criminal breach of trust in respect of certain jewels which were recovered by the police from the pledgees and sent to the Magistrate along with the

charge-sheet. The accused died during the inquiry and the alleged owner of the jewels made an application to the Magistrate to be put in possession of them under Section 517 and 523, Criminal P. C. It was held that Section 517 did not apply to the case and as there was no evidence or finding about the ownership, Section 523, Cr. P. C., also did not apply and that the Magistrate was not bound to hold an inquiry simply to determine the ownership of the jewels.

Another case relied on is -- 'Tarachand v. The State', AIR 1951 Madh-B 154 (B). It was held in this case that the word "concluded" in Section 517 means concluded after a full hearing with a final judgment or determination of the case against the accused and when, therefore, on account of the death of the accused the trial or inquiry could not be concluded and the Magistrate for that reason did not retain the jurisdiction to give a finding or to make a final judgment on the material before him, the power of the police to make a report to the Magistrate under Section 523 for the disposal of the property was not taken away. It was, further, held that in such a case the Magistrate had no jurisdiction to pass any orders as regards the return of the property to either party and that the property must be returned to the police for disposal according to law.

3. It has been contended that the learned Magistrate could have acted under the provisions of Section 523 (2), Cr. P. C., or in his inherent jurisdiction regarding the disposal of the property recovered from the possession of Chhitariya deceased.

4. In view of the above two decisions Section 517 is inapplicable to the case. Chhitariya the person from whom the property mentioned in Ex. P6 was recovered is dead and, therefore, no question of restoring possession to the person from whom the property was recovered arises in this case. The applicants allege themselves to be legal heirs of Chhitariya deceased and it is on this basis that they claim the property. On the other hand, the claim of the complainant was based on the fact that the property was stolen from his possession by Chhitariya deceased. In view of the fact that Chhitariya died before the inquiry could be concluded against him the question regarding the ownership of the property remained undetermined. Sub-section (2) of Section 523 lays down the procedure where the owner of the property seized is unknown. It has been argued on behalf of the applicants that the learned Magistrate may be directed to act in accordance with this provision in disposing of the property. There does not appear any objection to this proposal.

5. I, therefore, allow this application to this extent that the property mentioned in Ex. P6 shall remain in the custody of the Magistrate till such time as either of the parties shall establish its claim to it before him as provided under Section 523 (2), Criminal P. C.