

## **Bishambhar Rai vs State Through Mohan on 20 August, 1952**

**Equivalent citations: AIR1953ALL199, AIR 1953 ALLAHABAD 199**

ORDER

Brij Mohan Lall, J.

1. This is an application in revision by one Bishambhar Rai. He purchased two camels from one Mohan for Rs. 800/-. Mohan gave delivery of the said camels to Bishambhar Rai. There was some dispute about the payment of price. Mohan went to Bishambhar Rai's place during his absence and brought back the camels. He sent them to some other place obviously under the impression that Bishambhar Rai would not find clue to the said camels and would thus be prevented from creating any difficulty. Sometime later the camels disappeared. Mohan filed a complaint under Section 379, I. P. C. against Bishambhar Rai alleging that he had stolen the camels from the place to which they had been sent. The camels were recovered roaming about in a certain village. In other words, they were not recovered from Bishambhar Rai's custody. The criminal complaint filed by Mohan resulted in Bishambhar Rai's discharge. At the time of passing the order of discharge, the learned Magistrate passed an order directing the delivery ' of camels to Mohan. Against this order Bishambhar Rai preferred an appeal which was dismissed by the learned Sessions Judge. He has now come up in revision.

2. It may be stated at this stage that Mohan has since sold the said camels. I am informed that the sale had taken place before the notice issued by this Court was served on him. It is now contended by the learned counsel for Bishambhar Rai that this Court should direct Mohan to deposit the price of the two camels in Court and that the said amount should be paid to him (Bishambhar Rai) on his furnishing security; I am afraid this Court is not competent to pass any such order.

3. Section 517, Criminal P. C. empowers the High Court to pass an order for the disposal of the property in respect of which the offence is said to have been committed. But this section presupposes the existence of the property either in the custody of the Court or in the possession of any party to the litigation or a supurdar or any other person who is amenable to the jurisdiction of the Court. Sub-section (3) contemplates cases where livestock or other property subject to speedy and natural decay, e.g. growing crop, may be ordered by the Court to be sold before the question of disposal thereof is decided by it. In such cases the Court is empowered to pass the order of disposal in respect of the money value of the property. This is contained in the Explanation to the said section.

4. The learned counsel for the applicant contends that the Explanation empowers this Court to pass, so to say, a money decree against a person who may be deemed to have unlawfully misappropriated the property in question. I am afraid the Explanation does not go to that length. If the property has been disposed of and is no longer available to Court and if its money value is also not in the custody

of the Court or supurdar no order about the payment of money can be passed. In such a case it is for the aggrieved party to seek his remedy through the civil Court.

5. The learned counsel for the applicant has relied on the cases of -- 'Shamsundar v. Teja Singh', AIR 1935 Pesh 93 and --'Nagendra Nath v. Emperor', AIR 1934 Cal 454. These cases are clearly distinguishable. In both these cases the property had been disposed of contrary to the directions issued by the Court. The Court had directed its disposal in a particular manner and in disobedience of that direction one of the parties had disposed of the said property. It was held that the guilty party could be made to deposit the money value of the property in Court. I am not called upon in this case to express any opinion on that aspect of the question because, in the present case, the facts are entirely different. Mohan had at no stage been directed by any Court not to sell the camels. I am, therefore, of the opinion that no relief can be given to the applicant under Chapter 43, Criminal P. C. His remedy lies in the civil Court.

6. The application is rejected.