REVISIONAL CRIMINAL

Before Soni, J.

MAHANTA SINGH,—*Petitioner*

versus

HET RAM AND OTHERS,—*Respondents*

Criminal Revision No. 358 of 1953

1953

July, 10th

Code of Criminal Procedure (Act V of 1898), Section 520—District Magistrate—Whether can pass orders setting aside the orders of the magistrate—Section 517—Proceedings under—Nature of—Indian Evidence Act (I of 1872)—Section 25—Confession—Whether can be taken into consideration in proceedings under section 517, Criminal Procedure Code. ...

Held, that the District Magistrate is both a court of appeal as well as a court of revision and he has full powers to pass an order reversing or varying the order of the trial magistrate.

U. Pa Hla v. *Ko Po Shein* (1), and *Walchand and Jasraj Marwadi* v. *Hari Anant Joshi* (2), relied on.

(1) I.L.R. 7 Rang. 345 (F.B.)=A.I.R. 1939 Rang. 97 (F.B.)
(2) I.L.R. 56 Bom. 369

Held, that section 25 merely forbids the use of a confession made to police officer in a trial of the accused person for having committed an offence. This section does not forbid the use of a statement made by a thief or a robber in a case, in which the thief or robber is not being tried for having committed the theft or robbery or an allied offence. It certainly would be admissible in a civil case brought against the accused for recovery of the article or for damages for trespass and the like. Proceedings under section 517, though they occur in the Code of Criminal Procedure, are really in the nature of proceedings analogous to civil proceedings, in which the question to be determined is to whom the possession of a certain article should be given. These are proceedings in which the guilt of the accused person is not to be determined but are proceedings which take place after the main proceedings are over. The District Magistrate was, therefore, perfectly right in taking into consideration the statements made by the accused persons which led to the recovery of the currency notes of the value of Rs. 2,200 from them.

Queen Empress v. *Tribbovan Manakchand and others* (1), *Bhagat Ram* v. *The Crown* (2), *Pohlu* v. *Emperor* (3), relied on.

Petition under sections 435/439, Criminal Procedure Code, for revision of the order of Shri D. D. Kapila, District Magistrate, Hissar, dated the 14th February 1953, reversing that of Shri Sharnagat Singh, Magistrate, 1st Class, with Section 30 powers, Hissar, dated the 30th May 1953, and ordering that the currency notes of the value of Rs. 2,200 and the kantha be restored to Het Ram, otherwise rejecting the revision petition for recommending the case to the High Court for setting aside the acquittal or for remanding the case for fresh trial.

N. S. KEER, for Petitioner.

H. R. SODHI, for Respondent.

JUDGMENT

SONI, J. Mahan'a Singh, Asa Singh and Hazara Singh were sent up to take their trial under section 458 of the Indian Penal Code on the allegation that on the night between the 6/7th of March 1951, they and others entered the house of Pakhar and that they beat him and broke open the Soni, J.

(1) I.L.R. 9 Bom. 131
(2) 96 P.L.R. 1911
(3) A.I.R. 1943 Lah. 312

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locks of the trunks and looted property alleged to be of the value of Rs 35,000 in cash and clotnes and valuables worth about Rs 15,000. They were tried by a Magistrate of the First Class, who after considering the evidence in the case, passed an order on the 30th of May 1952, acquiting them. While passing his order, the Magistrate made another order that Rs 1,300 be returned to Mahanta Singh, accused, as also the gold ornaments taken into possession from Kesar Singh and that Rs. 900 be returned to Asa Singh. From this order a petition was filed on the 25th June 1952, to the District Magistrate, in which it was prayed that the order of acquittal be set aside and that currency notes of the value of Rs. 1,300 recovered from Mahanta Singh and those of the value of Rs. 900 recovered from Asa Singh and other property be restored to the petitioner, who was Het Ram, son of Pakhar. The District Magistrate does not seem to have heard this case with the promptitude that it deserved, as it came up for hearing before him at a very late stage. On the 14th of February 1953, he passed an order in which he said that, in his opinion, the acquittal was wrong and that the accused should have been tried under section 395 or 397, Indian Penal Code, but that as they had been acquitted, section 403, Criminal Procedure Code, barred a fresh trial. He could not have taken steps for an appeal to be filed in this Court against the order of acquittal, as on that day. 14th of February, 1953, the time of six months allowed for an appeal had long expired. The District Magistrate took the second prayer into consideration, which was for the restoration of the property. He came to the conclusion that though the confessional statement of an accused person may be inadmissible so far as his trial is concerned, it could yet be taken into consideration for purposes of section 517, Criminal Procedure Code, in order to determine the person to whose custody the property should be delivered. In the present case, the District Magistrate took into account the confessions of the accused and the statements of the police officers, to whom those confessional statements had been made because of which the cur-

rency notes and the gold *kantha* had been recovered. He ordered that the currency notes of the value of Rs, 2,200, and the *kantha* be restored to the petitioner. From this order of restoration a revision has been brought to this Court.

Mr. Keer's first point was that the District Magistrate had no authority under the provisions of section 520, Criminal Procedure Code, to upset the order of the Magistrate. According to Mr. Keer, the District Magistrate was neither a Court of appeal nor a Court of revision and, therefore, he could not pass an order under section 520, Criminal Procedure Code. Section 520 runs as follows :—

> "Any Court of appeal, confirmation, reference or revision may direct any order under section 517, section 518, or section 519, passed by a Court subordinate thereto, to be stayed pending consideration by the former Court, and may modify, alter or annul such order and make any further order that may be just."

In my opinion, the District Magistrate is both a Court of appeal as well as a Court of revision. He is a Court of appeal under section 515, Criminal Procedure Code, from an order passed under section 514 by any Magistrate. He is a Court of revision under the provisions of sections 435, 436 and 437, Criminal Procedure Code, and he has certain powers which he can exercise himself. Under section 435 he has the power to call for the records of any magistrate. Under section 436 he has the power in a case, in which he finds that a complaint has been dismissed or that an accused has been discharged, which orders are, in his opinion, wrong, to order further enquiry. Under section 437 he can, in the case of a person, who has been improperly discharged, direct that he should be committed for trial. As I have said before, under section 515, Criminal Procedure Code, he acts as a Court of appeal from the order of a Magistrate of any class, in which the question of the forfeiture of a bond is involved. In my opinion, he is thus both a Court of appeal and a

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Court of revision. The matter need not be discussed at great length in view of the Full Bench judgment of the Rangoon Court in *U Pa Hla* v. *Ko Po Shein* (1). The Full Bench, while discussing this case, held as follows:—

> "All First Class Magistrates are subordinate to the District Magistrate of the District, and either the Sessions Judge or the District Magistrate can under S. 435 call for any proceedings of any inferior Criminal Court in revision. The Sessions Judge and the District Magistrate are, therefore, both "Courts of revision" with regard to the proceedings of a First Class Magistrate within their territorial jurisdiction. Their jurisdiction is a concurrent one as it is in the case of revisional powers generally, and it does not seem to us that their jurisdiction in the matter is in any way dependent on the question whether an appeal has been filed or could be filed, against the original order of acquittal or conviction in the case concerned."

This Full Bench judgment of the Rangoon Court was followed by a Full Bench of the Bombay Court in *Walchand and Jasraj Marwadi* v. *Hari Anant Joshi* (2). In that case the head-note states:—

> "The applicant was the accused in certain criminal proceedings in which he was charged before a First Class Magistrate with having committed the offence of theft in respect of certain stones alleged to belong to the complainant. He was acquitted of the charge but the trying Magistrate directed the stones valued at Rs 4, the subject-matter of the charge, to be handed over to the complainant under section 517 of the Criminal Procedure Code. Notwithstanding the trifling nature of the matter in dispute

(1) I.L.R. 7 Rang. 345 (F.B.)=A.I.R. 1939 Rang. 97 (F.B.)
(2) I.L.R. 56 Bom. 369

the applicant, relying on the authority of *Khema Rukhad, in re* (1), applied to the High Court as the *only* Court having jurisdiction to revise the order under section 520 of the Criminal Procedure Code.

Held that *any* Court of appeal, confirmation, reference or revision may, under section 520 of the Criminal Procedure Code, revise any order passed under sections 517, 518, or section 519 by a Court subordinate to it and that irrespective of the fact whether an appeal or application for confirmation or reference or revision might be made in respect of what may be called the main charge before it."

The learned Judges over-ruled *Khema Rukhad, in re* (1), and approved *U Pa Hla* v. *Ko Po Shein* (2), already quoted by me. In my opinion, therefore, the District Magistrate had full power to pass the order which he did.

Mr Keer's next point was that section 25, Indian Evidence Act, forbids the use of the confessional statements of the accused persons, by which currency notes of the value of Rs 2,200 had been produced by them and given over to the police. Pieces of gold ornaments were recovered from a goldsmith, Kesar Singh, P.W. 14, who had stated that he had been given gold by the accused Mahanta Singh. Section 25 of the Indian Evidence Act runs as follows :—

"No confessions made to a police officer shall be proved as against a person accused of any offence."

This section merely forbids the use of a confession made to a police officer in a trial of the accused person for having committed an offence. This section does not forbid the use of a statement made

(1) I.L.R. 42 Bom. 664
(2) I.L.R. 7 Rang 345 (F.B.)

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by a thief or a robber in a case, in which the thief or robber is not being tried for having committed the theft or robbery or an allied offence. It certainly would be admissible in a civil case brought against the accused for recovery of the article or for damages for trespass and the like. Proceedings under section 517, though they occur in the Code of Criminal Procedure, are really in the nature of proceedings analogous to civil proceedings, in which the question to be determined is to whom the possession of certain articles should be given. It has been held in *Queen Empress* v. *Tribbovan Manak Chand and others* (1), that such a statement would be admissible in proceedings under section 517, Criminal Procedure Code, and this ruling of the Bombay High Court was followed in *Bhagat Ram* v. *The Crown* (2). The very opening words of section 517 are—

> "When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order. . . . ."

These proceedings are proceedings, in which the guilt of the accused person is not to be determined, but are proceedings, which take place after the main proceedings are over. This was also the view, which had been taken by Mr. Justice Blacker in *Pohlu* v. *Emperor* (3). Mr. Keer, however, said that that ruling helped him. At page 313 Mr. Justice Blacker, after referring to a statement made by the accused to a Sub-Inspector, said as follows:—

> "No doubt this is a confession to a police officer and it is also a statement made during the course of investigation. But it would only be barred under S. 25, Evidence Act, if it were being proved as against an accused person. For the purposes of S. 517, Criminal Procedure Code, where the accused does not claim the property, it cannot be said that this statement is being used against him and

(1) I.L.R. 9 Bom. 131
(2) 96 P.L.R. 1911
(3) A.I.R. 1943 Lah. 312

as it is otherwise a perfectly good piece of evidence, I see no reason for not admitting it and relying on it. Similarly, S. 162, Criminal P.C., only bars the use of such a statement "at any inquiry or trial in respect of any offence under investigation at the time when such statement is made." Section 517 does not relate to any such inquiry or trial. In fact the opening words, which are "when an inquiry or a trial in any criminal Court is concluded. . . . " show clearly that it is a separate proceeding from the substantial trial of the accused person for the offence. I can see no bar, therefore, either in S. 25, Evidence Act, or in S. 162, Criminal P.C., to this statement being used for the purpose of S. 517 to determine, firstly, whether the property is property regarding which an offence appears to have been committed, and, secondly, for determining the person to whose custody it should be delivered."

Mr. Keer says that Mr Justice Blacker held that the statement of the accused person in that case was not barred under section 25, Evidence Act, because the learned Judge had said that where the accused does not claim the property, it cannot be said that this statement is being used against him. In my opinion, Mr Justice Blacker was merely relating the facts of the case. It so happened that in that case the accused had not claimed the property, but the reasoning of Mr. Justice Blacker would equally apply even if the accused had claimed the property. I see no difference between the case, where the accused at the trial makes a claim to the property, which, according to him, might lead to his acquittal; or, where in another case the accused does not make such a claim. Mr Keer has not cited any ruling in which a view contrary to the views held by the Bombay Court and by the Lahore Court may have been taken. In my opinion, therefore, the District Magistrate was perfectly right in taking into consideration the statements

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made by the accused persons, Mahanta Singh and Asa Singh, which led to the recovery of the currency notes of the value of Rs 2,200 from them. The statement made by the Sub-Inspector in this case was as follows:—

> "Mahanta Singh was then interrogated and he offered to produce the stolen property. He was accordingly taken to his village where he made a statement that he had kept the stolen property in a trunk at his house and offered to produce the same. He led us to his house wherefrom he produced the currency notes, Ex. P. 1, valued Rs 1,300 from a locked trunk, key of which was produced by the wife of Mahanta Singh, accused."

The same Sub-Inspector made the following statement with regard to Asa Singh :—

> "Asa Singh, accused, on further interrogation disclosed on 1st May 1951 that he had kept the currency notes in his trunk at his house and offered to produce them from there."

In my opinion, these two statements were rightly taken into consideration by the District Magistrate in determining the question as to who was entitled to the possession of the stolen property. I, therefore, find no reason why I should interfere with the order of the District Magistrate regarding the currency notes of Rs 2,200 in the application before me.

Mr Keer next said that in any case that part of the order, by which the District Magistrate ordered that the *kantha* be restored to Het Ram, was wrong and the *kantha* should be ordered to be restored to Mahanta Singh. So far as the *kantha* is concerned, the evidence is as follows :—

The goldsmith Kesar Singh, P.W. 14, stated:—

> "Mahanta Singh brought gold sovereigns and other pieces of gold for making *karas* and *bugtians*, which I made accordingly. I did not make any entry

in my *bahis* in this respect at that time. Later on I made an entry relating to these ornaments at the asking of the police."

P. W. 17 Charan Singh, Station House Officer, stated as follows:—

"After the arrest of the accused, when they had been taken to Amritsar by Mr. Bhatia, the then S.H.O., Fatehabad, I was also ordered to proceed to Amritsar and there took into possession *inam*, *some nalian* and 50 *mankas* of gold from Kesar Singh, P.W.,—*vide* memo, Ex. P.R."

From these statements it appears that Kesar Singh had been delivered some gold sovereigns and pieces of gold for making certain ornaments, which he made, but I do not know how the District Magistrate says that the *kantha* is to be returned. According to the evidence, it was an *inam*, some *nalian* and 50 *mankas* of gold that had been delivered by Kesar Singh to Charan Singh, the Station House Officer. It may be that these formed parts of a *kantha* and the District Magistrate may perhaps be referring collectively to those pieces of ornaments, but the petitioner before me in the High Court is Mahanta Singh. I do not see how Mahanta Singh can be given the possession of these pieces of gold ornaments. The property was had from Kesar Singh and possibly these pieces of gold ornaments may have to be returned to Kesar Singh, but that is a question, which will have to be decided when Kesar Singh makes an application for return of these pieces of gold ornaments. According to the statement of Kesar Singh, Mahanta Singh delivered some pieces of gold and gold sovereigns to the goldsmith and he was to make *karas* and *bugtians*. The pieces that were taken from Kesar Singh were not *karas* and *bugtians*. Therefore, so far as the petition of the present petitioner that the pieces of gold ornaments, called *kantha* by the District Magistrate, may be returned to him, is concerned, it is without any force.

The result is that the petition fails *in toto* and is dismissed.

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