

1978 Present : Malcolm Perera, J. and Wanasundera, J.

M. S. M. SUFFIYAN, Petitioner

and

N. B. RATNAYAKE, INSPECTOR OF POLICE, CHILAW and  
ANOTHER, Respondents

S. C. Application No. 121/76—M. C. Chilaw No. 48667

*Administration of Justice Law, No. 44 of 1973, section 262—Disposal of property regarding which offence committed—Meaning of term “property”.*

Section 262 of the Administration of Justice Law, which *inter alia*, deals with the disposal of property regarding which an offence appears to have been committed, gives in sub-section 3 of this section an extended meaning to the term “property” in that it includes also any property into or for which the original property may have been converted or exchanged and anything acquired by such conversion or exchange.

APPLICATION to revise an order of the Magistrate’s Court, Chilaw.

M. S. M. Nazeem, for the petitioner.

Miss S. Burhan, State Counsel, for the Attorney-General.

*Cur. adv. vult.*

August 18, 1978. MALCOLM PERERA, J.

The petitioner, who is a jeweller carrying on the business of the sale and purchase of gold and jewellery in Kurunegala, at a business house called “Modern Jewellers”, moves this Court to revise an order made on the 28th January 1976, by the learned Magistrate.

The learned Magistrate's order was made in connexion with a prosecution that the Police had launched against three persons, namely, K. Don Benedict, aged 25 years, Richard Perera, aged 20 years, and Lorreta Perera, a school girl aged 15 years. They were accused of theft, of retention of cash in a sum of Rs. 900 and a gold bracelet valued at Rs. 850 from the possession of Collin Perera, the respondent to the present application.

It would appear that Collin Perera was the father of the 3rd accused and was also the employer of the 2nd accused. The 1st accused appears to be a friend of the other two accused. There had been some friendship and association between the 3rd and the 2nd accused and the 3rd accused is alleged to have taken property from the custody of her father and given it to the 1st accused to be handed over to the 2nd accused.

The statements made in the proceedings show that ultimately the gold article which was said to contain  $3\frac{1}{2}$  sovereigns of gold came into the hands of the petitioner. The petitioner states that he purchased this article, *bona fide*, and paid a sum of Rs. 1,100 to the 1st accused after he had established its identity, and he also obtained a receipt from the 1st accused. The petitioner states that after a period of fourteen days he had melted down this article, and along with other gold which he possessed he had made some jewellery. When the Police came to him in the course of the investigations, he made a statement to the Police and also handed over a sum of Rs. 1,100 to Inspector Ratnayake.

At the trial the 1st accused pleaded guilty to the charge of theft, and the 2nd and 3rd accused to the charge of retention. Mr. Nazeem drew our attention to the fact that there is no specific record as to whether a plea was taken in respect of Count No. 3 of the charge. It seems to clear to us from the proceedings that the Police had not proposed to go on with that charge once the other pleas had been recorded.

The proceedings also show that on that day the petitioner who was a witness for the prosecution, had made an application for the return of this Rs. 1,100 which he had given to Inspector Ratnayake. The learned Magistrate had refused this application and had directed that this sum be given to Collin Perera from whom the money and the gold bracelet had been removed. The application for revision is in respect of this order.

One of the main points raised by counsel for the petitioner is that it was not competent for the learned Magistrate to have made this order in respect of the amount handed over to Inspector Ratnayake as this was not property "regarding which any

offence appears to have been committed or which has been used for the commission of any offence” as stated in section 262(1) of the Administration of Justice Law.

Mr. Nazeem submitted that the sum of Rs. 1,100 recovered from the petitioner by the Police should be returned to him, as that sum of money was not the property “regarding which any offence appears to have been committed.”

However the word “property” as contemplated in this section has been given an extended meaning, and under 262 (3) it should include :—

“not only such property as has been originally in the possession or under the control of any party but also any property into or for which the same may have been converted or exchanged and anything acquired by such conversion or exchange whether immediately or otherwise.”

The petitioner in his petition and affidavit has not frankly stated as to what he had done with this gold and whether or not it is still with him, and also whether the money he handed over to Inspector Ratnayake was the proceeds or had any connection with the offence. Considering the upward price of gold during this period it is doubtful whether the petitioner had suffered any loss in this transaction, and it may well be that he probably has benefited by it. In all the circumstances of this case we are not disposed to exercise our powers of revision in favour of the petitioner.

We would accordingly refuse this application.

WANASUNDERA, J.—I agree.

*Application refused.*