

1968

Present : Tamblah, J.

MARIYATHASAN, Petitioner, and MARGARET ROSE (wife of
Mariyathasan), Respondent

S. C. 471/67—Application in Revision in M. C. Jaffna, 33353

*Criminal Procedure Code—Sections 413 and 419—Seizure of movable property by
Police—No offence proved against accused—Jurisdiction of Magistrate to deal
with the property seized—Scope.*

When a police officer seizes any property alleged to have been stolen but does not proceed with the case, the Magistrate has no jurisdiction to order the restoration of the property to a person other than the person from whose possession it was taken.

Sugathapala v. Thambirajah (67 N. L. R. 91) not followed.

APPPLICATION to revise an order of the Magistrate's Court, Jaffna.

R. Manikkavasagar, for the petitioner.

L. D. Guruswamy, Crown Counsel, for the Attorney-General.

February 25, 1968. TAMBIAH, J.—

The petitioner, who is the husband of the first claimant-respondent, claimed car No. EY 5558 which was seized by the Police in connection with this case. On a complaint of theft made by the brother of the first claimant-respondent, this car was taken from the house of the petitioner.

In his affidavit the petitioner alleges that he bought this car on 8.10.64 and registered it in his name on 12.12.64. He lost possession of the car on 2.12.64 and regained possession on 1.9.66. It was while the car was in his possession that the Police seized the car. The fact that the car was taken from the possession of the petitioner by the Police is not contradicted.

Inquiries revealed that there was a dispute between the petitioner and the 1st claimant-respondent, his wife, and that they were living in separation. After inquiries the Police did not proceed with any action. On an application made by the Police the first claimant-respondent was noticed. Both the petitioner and the first claimant-respondent made rival claims to this car. The learned Magistrate held an inquiry and held that the true owner of the car was the first claimant-respondent and ordered that the car be handed over to her. The petitioner appealed from this order and the appeal was rejected on a preliminary objection on the ground that he had no right of appeal. Thereafter he has filed this application in revision. The first claimant-respondent did not appear at the hearing but on being noticed the Attorney-General was represented by the learned Crown Counsel.

It has been held in a number of cases that when the Police seize a movable property and do not take any action, the property should be returned to the person from whom it was taken. In *Punchinona v. Hinniappuhamy*¹ H. N. G. Fernando, J. (as he was then) held that where the seizure by a Police officer of property alleged or suspected to have been stolen is reported to a Magistrate under section 419 of the Criminal Procedure Code, the Magistrate, if he does not consider official custody to be necessary, has no alternative but to order the property to be delivered back to the person from whose possession it was taken. The Magistrate has no power to order the property to be given to any other person on the ground that he is the true owner. This view has been followed by him later in *Piyadasa v. Punchi Banda*². However, in *Sugathapala v. Thambirajah*³ Sri Skanda Rajah, J., took a different view. I am in agreement with the view expressed by My Lord the Chief Justice. As pointed out by him, it is important to realise that section 419 of the Criminal Procedure Code is not a provision which confers jurisdiction to decide disputed cases of possession. Its object is to provide for the Magistrate being brought with the least possible delay into official touch

¹(1959) 60 N. L. R. 518.

²(1959) 62 N. L. R. 307.

³(1964) 67 N. L. R. 91.

with the property seized by the Police. If the Magistrate does not consider official custody necessary, he has no alternative but to order delivery back to the person in whose possession the property was at the time of seizure (*vide* the dictum of H. N. G. Fernando, J. in (1959) 60 N. L. R. 519).

In the instant case the Police did not proceed with an action and the learned Magistrate had no jurisdiction to order the restoration of the possession of the car to be given to a person other than the person from whose possession it was taken.

Section 413 of the Criminal Procedure Code states that when an inquiry or trial in any Criminal Court is concluded the Court may make such order as it thinks fit for the disposal of any document or other property produced before it regarding which any offence appears to have been committed or which has been used for the commission of any offence. At the conclusion of a trial or inquiry, it is only where there is a finding by a Magistrate that an offence appears to have been committed or that the property has been used for the commission of the offence that he has the discretion to order the disposal of it, as he thinks fit.

As my Lord the Chief Justice pointed out in *Punchinona v. Hinni appuhamy* (supra), under section 419 of the Criminal Procedure Code the Magistrate has a more limited jurisdiction. He must return the property to the person from whose custody the possession was taken or refuse to do so, if he thinks it necessary to detain the property for the purpose of the proceedings before the court.

Under Section 419 of the Criminal Procedure Code the discretion given to the learned Magistrate is to make such order as he thinks fit in respect of the delivery of possession of such property to the *person entitled to possession, or if such person cannot be ascertained he makes an order respecting the custody and production of such property*. As has been pointed out in a series of cases the Magistrate's Court cannot be converted into a civil court and it cannot exercise jurisdiction over the dispute of title to property.

Section 523 of the Indian Criminal Procedure Code is analogous to section 419 of the Ceylon Criminal Procedure Code. A number of Indian decisions too support the view that when no offence has been shown to have been committed the Magistrate should return the article seized by the Police, to the person from whom such article was seized (*vide Vaiapuri Chetty v. Sinniah Chetty*¹; *Lakshichand Rajmal v. Balmukyno*²).

For these reasons I set aside the order of the learned Magistrate and order that the car be handed over to the petitioner. If the first claimant-respondent has a claim, she is entitled to bring an action in the appropriate Court, if so advised.

Order set aside.

¹ (1931) A. I. R. (Madras) 17.

² (1936) A. I. R. (Bombay) 171.