

1958

Present : H. N. G. Fernando, J.

D. JAYASURIYA, Appellant, *and* H. WARNAKULASURIYA,
Respondent

S. C. 1,174, with Application 92—M. C. Tangalla, 72

Criminal Procedure Code—Seizure by police officer of property alleged to have been stolen—Power of Magistrate to order delivery of such property to a person—Sections 413, 419.

Section 419 of the Criminal Procedure Code does not afford a means of settling civil disputes. It cannot be utilised by a "complainant" in order to obtain an order of possession from a Magistrate of any article seized from the

possession of another as being stolen property if the other person denies the theft and claims the property as his own. In such a case section 413 is the only provision which can be invoked, and it may be invoked only after the conclusion of proceedings instituted under section 148.

APPEAL, with application in revision, from a judgment of the Magistrate's Court, Tangalla.

A. F. Wijemanne, for the petitioner and appellant.

E. B. Sathrukulasinghe, for the respondent.

Cur. adv. vult.

March 25, 1958. H. N. G. FERNANDO, J.—

The proceedings before the Magistrate commenced with an "intimation to Court" of an alleged complaint by the present respondent to the effect that the appellant had removed a fishing boat from the custody of the respondent on 22nd May 1957 and taken the boat to the appellant's land. The "intimation" further stated that there was a dispute between the parties claiming ownership of the boat and, "as the Police apprehended a breach of the peace the boat was kept in the custody of the Village Headman", and concluded with a request for an order regarding the disposal of the boat. The Magistrate thereafter held a long inquiry at the conclusion of which he held that the boat which originally belonged to the present appellant had been handed over to Warnakulasuriya the respondent on an agreement and that Warnakulasuriya was entitled to the possession and use of the boat. On this ground the learned Magistrate held that the boat had been unlawfully removed from Warnakulasuriya's custody and made order that the boat be delivered to him.

The order purports to have been made under section 419 (1) of the Criminal Procedure Code which states *inter alia* that "The seizure by any police officer of propertyalleged or suspected to have been stolenshall be forthwith reported to a Magistrate who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof."

The principal argument for the appellant has been that the Magistrate has no jurisdiction to order the delivery of the boat to Warnakulasuriya except after the conclusion of proceedings duly instituted in one of the modes prescribed in section 148 of the Criminal Procedure Code.

It is interesting to compare the circumstances of the case of *Martin Silva v. Kanapathypillai*¹. There two boutique keepers had both complained to the Police on the same day of the loss of cash from their respective adjoining boutiques. The Inspector of Police discovered cash to the value of Rs. 407 in A's boutique and said that B claimed that money. The money was accordingly brought to Court and retained there. Thereafter the Magistrate recorded that A's proctor moved for the delivery of the cash to A and that B's proctor stated that the money belonged to his client B. The Magistrate then fixed the respective claims of both claimants for inquiry. At the conclusion of the inquiry the Magistrate said that the inquiry had been into a complaint by B of theft of property belonging to him and concluded on the evidence that the cash was the property of B and had been stolen from him although the evidence was insufficient to sustain a charge of theft against A. On this ground he ordered the cash to be delivered to B. Abrahams C.J. makes it clear in his judgment that the Magistrate had no jurisdiction to make any order for the restoration of the property to B unless and until he was satisfied that an offence had been committed in respect of that property and further that he could not have conducted an inquiry into any such offence unless there was before him a proper complaint under section 148 of the Code.

The learned Chief Justice observed that the only provision of law under which the order regarding the property could possibly have been made was section 413 of the Criminal Procedure Code, that is to say at the conclusion of an inquiry or trial held after proceedings had been duly instituted under section 148. It would seem at first sight that this view ignored the existence of section 419 which also enables a Magistrate to make an order for the disposal of property seized and brought to Court. But I am satisfied upon a consideration of that section that it would have no application in the circumstances of the case with which Abrahams C.J. was dealing. Section 419 contains no reference whatever to the necessity for any report or complaint under section 148, nor can it be said that even by implication the jurisdiction to make an order for delivery of seized property can only be exercised if such a complaint or report has been made. Indeed there may be many cases where, when property is seized by the Police on grounds specified in the section, some person can come forward and obtain an order for possession in his favour without there being any inquiry by the Magistrate as to the commission of any offence. But if A is actually in possession of a chattel and it is seized and brought to Court because B claims that it was stolen from him by A, a Magistrate who inquires into the rival claims of A and B without taking proceedings into the allegation of theft would be deciding a purely civil dispute. If the Magistrate's order in the present case were allowed to stand Warnakulasuriya would, through the intervention of the Magistrate, be recovering possession of the boat from the appellant although he has neither instituted a prosecution for theft against the appellant nor instituted proceedings in a civil court for the purpose. In my opinion section 419 was not intended to afford a means of settling civil disputes in this manner.

¹ (1939) 14 C. L. W. 41.

I would hold that section 419 cannot be utilised by a “complainant” in order to obtain an order of possession from a Magistrate of any article seized from the possession of another as being stolen property if the other person denies the theft and claims the property as his own. In such a case section 413 is the only provision which can be invoked, and it may be invoked only if, as this court has previously held, proceedings have been instituted in respect of the alleged offence of theft.

It is unnecessary for me to decide in the present case whether section 419 would permit any “interim order for possession to be made while inquiry or trial is pending”. I accordingly set aside the order appealed from and direct that the boat be returned to the possession of the appellant.

Order set aside.

