

1959

Present : H. N. G. Fernando, J.K. PIYADASA, Appellant, *and* R. M. PUNCHI BANDA, Respondent*S. C. 490—M. C. Kandy, No. S. R. 9/58**Criminal Procedure Code—Scope of section 419.*

Under section 419 of the Criminal Procedure Code the property seized by the Police must, if there is no inquiry or trial pending in the Magistrate's Court, be restored to the person who had possession of it at the time of the seizure and not to any other person who claims it.

APPPEAL, with application in revision, from an order of the Magistrate's Court, Kandy.

M. M. Kumarakulasingham, for the claimant-appellant.

P. Ranasinghe, with *N. R. M. Daluwatte*, for the claimant-respondent.

Cur. adv. vult.

January 23, 1959. H. N. G. FERNANDO, J.—

Under section 419 of the Criminal Procedure Code property seized by the Police has either to be kept in custody pending an inquiry or trial

or else returned to the person from whose possession it was seized. The Court has no power under that section to order delivery to be made to any other person on the ground that he, and not the former possessor, is entitled to possession.

In the present case, there is no inquiry or trial pending in the Magistrate's Court and therefore no question of an order for temporary custody : hence possession has necessarily to be restored to the person who had possession at the time of the seizure. The order of the learned Magistrate was therefore right, though not for the reasons given by him.

The appeal is rejected, and the application in revision refused.

Appeal rejected.
