

1963

*Present : Herat, J.*

A. MANIS APPU, Petitioner, and S. L. RATWATTE, Respondent

*S. C. 112/63—Application in Revision in M. C. Tissamaharama, 39,407**Disposal of property regarding which an offence appears to have been committed—  
Scope of ss. 357 (1) and 413 (1) of Criminal Procedure Code.*

In a prosecution for robbery of the key of a Dewale, the accused were acquitted. The Magistrate was satisfied, however, that the offence had been committed by some unknown persons. He therefore ordered the key, which was a production in the case and which had been found by the Police in the possession of the present petitioner who was not one of the accused, to be restored to its true owner. In the present application in revision, the petitioner claimed for himself the custody of the key and sought to have the order of the Magistrate set aside.

*Held*, (i) that the petitioner, although he was not a party to the criminal proceedings, was entitled to move in revision under section 357 (1) of the Criminal Procedure Code.

(ii) that the order of the Magistrate in respect of the key was warranted by the provisions of section 413 (1) of the Criminal Procedure Code.

**A**PPPLICATION to revise an order of the Magistrate's Court, Tissamaharama.

*Colvin R. de Silva*, with *C. D. S. Siriwardene*, for Petitioner.

*H. W. Jayewardene, Q.C.*, with *C. R. Gunaratne* and *L. C. Seneviratne*, for Respondent.

*Cur. adv. vult.*

September 20, 1963. HERAT, J.—

This is an application by one Adikaranage Manis Appu the petitioner, in revision to revise an order made by the learned Magistrate of Tissamaharama in Magistrate's Court, Tissamaharama case No. 39,407 under Section 413 (1) of the Criminal Procedure Code, Chapter 20. The petitioner claims to be the Maha Kapurala of the Maha Dewale at Kataragama and the respondent to this petition is S. L. Ratwatte, Basnayake Nilame of the Ruhunu Maha Kataragama Dewale. The circumstances out of which the present application arises are as follows:—It appears that the key of the Maha Dewale, that is the main Dewale as distinct from the Thevaniamma Dewale and the Valliamma Dewale, had been given by the respondent Basnayake Nilame to one Davith Appuhamy, who was the Gaboda Rala or Store-keeper of the Maha Dewale. On the morning of the 23rd of May, 1962, Davith Appuhamy was on his way to the main Dewale with this key, when, it is alleged, he was set upon by certain persons and the key was forcibly taken from him. Subsequently the Police produced five suspects before the Magistrate of Tissamaharama. The third suspect was the present petitioner Manis Appu. The second suspect and third suspect were discharged; but a prosecution was launched in case No. 39,407 of the Magistrate's Court, Tissamaharama, against the first suspect, fourth suspect and the fifth suspect who became the first, second and third accused respectively in that case. The first accused in that case was, in fact, the son of the present petitioner Manis Appu. The first accused, son of Manis Appu, was charged inter alia with robbery of the key from Davith Appuhamy. At the trial in the said case M. C. 39,407, after the evidence for the prosecution was led, the learned Magistrate, without calling for a defence, acquitted the accused, because he was not satisfied with the evidence led for the prosecution as regards the identity of the persons who committed the offences referred to in the charge. The learned Magistrate, in his order, however, states that he is satisfied that the incident in question took place. I have carefully read the evidence led in the case before the learned Magistrate and have also carefully read the order of the learned Magistrate and I am satisfied in my own mind that the learned Magistrate was fully satisfied that, at best, a prima facie case had been established to the effect that on the 23rd May, 1962, Davith Appuhamy had been set upon by certain persons and the key of the Maha Dewale robbed from him. It was only the identity of the robber or robbers and the persons who took part in the incident which could not be established.

During the pendency of the inquiries preceding the institution of the said case M. C. 39,407, the Police took the key of the Maha Dewale from the petitioner Manis Appu and it was produced as one of the productions in the said case. As to how Manis Appu came by the key it is Manis Appu's position that the key was always with him and in his custody. On the other hand, it was the contention on behalf of the prosecution in M. C. Tissamaharama case No. 39407 that it was this identical key which had been forcibly taken from David Appuhamy on 23rd May, 1962.

At the conclusion of the case M. C. Tissamaharama No. 39,407 the learned Magistrate made an order under Section 413 (1) of the Criminal Procedure Code (Chapter 20) giving the key into the custody of the respondent to the present application, namely, the Basnayake Nilame. Section 413 (1) of the Criminal Procedure Code is as follows:—"When an inquiry or trial in any criminal Court is concluded, the Court may make such order as it is 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". The key is now with the respondent Basnayake Nilame. It is this order of the learned Magistrate giving the key to the Basnayake Nilame, which the petitioner in this application prays this Court to set aside by way of revision. I am of opinion that, although the petitioner was not a party to the proceedings in which the order under Section 413 (1) was made, nevertheless, section 357 (1) of the Criminal Procedure Code is wide enough to enable him to bring the matter before the notice of this Court and to move this Court to exercise its revisionary powers if proper grounds exist. But in the circumstances of this case, I do not think that the extraordinary powers of revision possessed by this Court should be exercised in the petitioner's favour in the present application, for, I think the learned Magistrate acted legally and correctly, if I may say so, with the greatest humility, in making the order which he made. The language of Section 413 (1) is to the effect that a Court can make an order disposing of a production as the Court thinks fit when the production is one "regarding which any offence appears to have been committed". For the reasons I have already given it is amply clear on a perusal of the learned Magistrate's order that it appeared to him that the robbery of the key had in fact taken place, although the evidence was insufficient to identify the robber. Therefore the key was a production in the case and such a production regarding which an offence appeared to have been committed. In the circumstances the Magistrate could correctly exercise his discretion and dispose of the key as he thought fit. The Basnayake Nilame under the law is vested with the temporalities of the Dewale—vide Section 20 of Chapter 318—and I do not think that the learned Magistrate has exercised his discretion in giving the key to the respondent in any other way than that which is in the best interests of the great religious institution one is concerned with in this case. The application is refused.

*Application refused.*