

1967

Present : Sirimane, J.

W. BALAGALLE, Appellant, and K. SOMARATNE and another,
Respondents

S. C. 232/67—M. C. Matale, 25023

Criminal Procedure Code—Disposal of stolen property—Section 419 (1)—Effect of the words “ entitled to the possession thereof ”.

Where a person, after discovering that stolen property has been sold to him, surrenders the property to the police, the Magistrate has power under section 419 (1) of the Criminal Procedure Code to order the property to be handed over to the true owner and not to the person from whom it was taken by the police.

Punchinona v. Hinniappuhamy (60 N. L. R. 518) not followed.

APPEAL from an order of the Magistrate's Court, Matale.

E. R. S. R. Coomaraswamy, with *P. Wimalachandra*, for the Claimant-Appellant.

C. R. Gunaratne, for the Claimant-1st Respondent.

Ranjith Gunatilleke, Crown Counsel, for the Attorney-General.

May 25, 1967. SIRIMANE, J.—

This appeal arises from an order made by the learned Magistrate under section 419 of the Criminal Procedure Code.

I agree with the submission made by Mr. Guneratne that no appeal lies against an order made under that section, but on the application of Mr. Coomaraswamy I have decided to deal with this matter in revision.

One Somaratne the 1st respondent to this appeal was the owner of car number EN 7734. Admittedly he was the registered owner under the Motor Traffic Act, and the car was in his possession. While in his possession, this car was stolen on 16.12.66 and a complaint was made to the police. On 28.12.66 this car (with the number plates altered to read as EN 5635) had been sold to one Balagalle, the appellant. The position taken up by Balagalle was, that the car was sold to him by some unknown men one of whom posed as “ Abeyesundere ” the owner of the car. He says that soon after his purchase he realised that he had not been given

the certificate of registration and his suspicions being aroused, he contacted the real Abeyesundere and learnt from him that he had not sold car number EN 5635. He therefore handed over this car (EN 7734) to the police. In short, the appellant himself seems to have realised that possession of the car by him would expose him to the danger of a criminal prosecution for he realised that he had no claim to possess the said car number EN 7734. The police filed no case; they were apparently satisfied that the appellant too had been duped by the thieves. The car was produced in court by the police, and an order in regard to its disposal sought from the learned Magistrate.

It is conceded that section 419, sub-section (1), is the section under which the learned Magistrate was empowered to make an order in these circumstances. That section enacts that the "Magistrate..... shall make such order as he thinks fit respecting the delivery of such property to the person *entitled to the possession thereof*". To my mind it seems quite clear on the admitted facts in this case that the person "*entitled to the possession*" of the car is Somaratne, the 1st respondent. It was argued for the appellant however that when property is taken from the custody of a person, the Magistrate has no alternative but to order the return of that property to the person from whose possession it was taken. Reliance was placed for this submission on the case of *Punchinona v. Hinniappuhamy*¹. With great respect I regret that I am unable to share the view that a Magistrate has no power to order property to be given to any person other than the person from whose possession the property was obtained. My attention was also drawn to the case of *D. Jayasuriya v. H. Warnakulasuriya*². In the concluding part of that judgment the same learned Judge (H. N. G. Fernando, J.) said "I would hold that section 419 cannot be utilised by a 'complainant' in order to obtain an order of possession from the 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 this case there is no denial of the theft but on the contrary the appellant himself had realised that the car sold to him was a stolen one, and that he himself had no right to possess it.

While I agree that a Magistrate's Court should not be turned into a forum for the settlement of civil disputes, yet, a Magistrate making an order under section 419 must exercise his judicial discretion in ascertaining the person entitled to possession. In doing so the Magistrate, in my opinion, may order that property produced before him be handed over to a person other than the person from whom it was taken. No doubt in

¹ (1959) 60 N. L. R. 518.

² (1958) 61 N. L. R. 189.

the large majority of cases that come before the Magistrates' Courts the correct order would be to return the property to the person from whose possession it was taken, as the Magistrate's Court does not decide civil rights. But there can be cases, such as this, where there are special circumstances which would render such a course unjustifiable. In the case of *Sugathapala v. J. K. Thambirajah*¹, where the facts were very similar to those in the instant case, this Court made order that the car found in the possession of one Thambirajah should be handed to one Sugathapala. The decision in *William v. Silva*² also supports my view.

In my view the Magistrate was right in making order that the car should be returned to the 1st respondent, Somaratne. The appeal is rejected, and the application in revision refused.

Appeal rejected.
Application refused.

¹ (1964) 67 N. L. R. 91.

² (1921) 22 N. L. R. 403.