

1921.

Present : Shaw J.

THE SUB-INSPECTOR OF POLICE, CHILAW, v.
HORATHALA.

187—P. C. Chilaw, 10,043.

Criminal Procedure Code, s. 413—Accused charged with offering illegal gratification—Charge withdrawn—Order forfeiting the amount paid.

The accused was charged under section 211 of the Penal Code for having offered an illegal gratification to the police.

The Magistrate held that no offence was committed by the accused in offering the sum to the police, but ordered that the sum paid should be forfeited.

Held, that the order as to forfeiture was wrong.

THE facts appear from the judgment.

E. W. Jayawardene (with him *Arulanandan*), for appellant.

February 23, 1921. SHAW J.—

This is an appeal from an order of the Police Magistrate under section 413 of the Criminal Procedure Code forfeiting a sum of Rs. 50 which had been paid by the accused man to the police under the following circumstances. The accused's son was charged by a police constable with being unlawfully in possession of opium. The father thereupon offered a bribe of Rs. 50 to the constable if he would discontinue the charge against his son. The father was then charged before the Magistrate under section 211 of the Penal Code for having offered an illegal gratification to the police. The charge against the son for being unlawfully in possession of opium was dismissed, the Magistrate who heard that charge not being satisfied that the offence had been committed. Thereupon, the

Sub-Inspector, who was in charge of the case against the father for offering an illegal gratification, withdrew the charge in respect of that offence. He withdrew the charge because an Indian case was cited to the Magistrate which was to the effect that where a bribe had been offered to the police for the purpose of stifling a charge which eventually turned out to be an unfounded one, a charge of offering an illegal gratification in order to prevent the unfounded charge being brought was not an offence under the section of the Indian Ordinance which corresponds to section 211 of our Penal Code. Whether this Indian decision is correct or not I need not consider in the present case, but as the matter now stands the Magistrate has decided that no offence was committed by the father in offering this sum to the police, and, therefore, the Rs. 50 which he handed to the police is not a sum of money with respect to which a criminal offence has been committed. Section 413, under which the Magistrate has made an order for the confiscation of the Rs. 50, only applies to property regarding which an offence appears to have been committed, or which has been used for the commission of an offence. That has been found not to be the case as regards this Rs. 50. It cannot, therefore, be confiscated, but must be returned to the present appellant.

I, therefore, set aside the order and direct the return of the money to the appellant.

Set aside.

1921.

SHAW J.

The Sub-Inspector of Police, Chilaw, v. Herathala