

Present : Schneider A.J.

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WILLIAM v. SILVA.

236—P. C. Ratnapura, 16,734.

Disposal of property brought into Court in connection with an alleged offence—No offence committed—S. 413 of Criminal Procedure Code does not apply.

Where property is brought into Court as having been in the possession of a particular person upon an allegation that an offence has been committed in regard to such property, and the Court finds that no offence has been committed, it may order the restoration of the property to the person in whose possession it had been found.

Section 413 of the Criminal Procedure Code refers only to those cases in which there is a conflict of claims to the property brought into Court. In such cases the section provides that the Court may make such order as it thinks fit for the disposal of property produced before it, provided (1) the inquiry or trial is concluded before it, (2) the property is that regarding which any offence appears to have been committed or to that which had been used for the commission of any offence.

THE facts appear from the judgment.

Ameresequera, for appellant.

March 14, 1921. SCHNEIDER A.J.—

The accused in this case was charged with having broken into the house of one Don Allis in order to commit theft, and with having committed theft of cash and other property to the value of Rs. 963·81. In the report by the police to Court is given a list of productions, in which are included cash Rs. 56·31, two gold rings, a silver watch with a double gold chain with gold coins as pendants, and a bunch of keys. The complainant claimed these productions as his property which the accused had stolen. The police constable to whom the accused was given in charge stated in his evidence in the Police Court that he found these productions in the accused's pocket. In his statutory statement, which was generally to the effect that the complainant had caused him to be dragged into the house with a view to making a false charge against him, the accused stated, *inter alia*, that the complainant had searched him and taken from him Rs. 300 and his "rings," and later, referring presumably to the productions, "these things were put into my pocket before I was arrested." The effect, therefore, of the statement is that

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the productions were introduced into the accused's pocket in order to fabricate a false charge, and that the productions were not the property of the accused.

The Magistrate disbelieved the charge, discharged the accused, and directed the productions to be returned to the complainant. While discharging the accused, the Magistrate ordered him to execute a bond for his good behaviour. (Section 82 (b), Criminal Procedure Code.) This was on November 24, 1920. Against the order to give security the accused appealed, and the order was set aside by this Court. The decision of this Court was communicated to the accused on February 5 last. On the 7th he presented a petition to the Magistrate praying the Magistrate to order that the complainant should return to the accused the said sum of Rs. 300 and "two rings." He stated that he had claimed these as his property in Court. Upon this petition the Magistrate endorsed "I cannot interfere." The accused has now appealed from that order. In the fourth paragraph of the petition of appeal the appellant states that he applied to the Magistrate to order the property mentioned in the first paragraph of the petition of appeal, which were found in his possession, to be delivered to him. The property mentioned in the first paragraph of his petition of appeal is "Rs. 56·31 in cash, two gold rings set with red and blue stones, a silver watch with a double gold chain with three gold coins, worth Rs. 963·81 in all"—that is the cash and articles described in the list of productions. But what the appellant claimed in his petition to the Magistrate were Rs. 300 and two rings.

It is obvious from the facts which I have mentioned that the accused did not claim any of the productions, but only stated that Rs. 300 and "rings," without specifying the number or giving any description, had been removed from his possession by the complainant. It is not possible upon the facts to say that the accused made claim to any of the productions before February 7. Accordingly, at the time the Magistrate made the order that these productions should be returned to the complainant, the only claimant to those productions was the complainant.

In his petition of appeal the accused complains that the order for the restoration of the property to the complainant should not have been made. His counsel, on appeal, submitted that on the authority of the case of *Cassim v. Pitche*¹ the order of the Magistrate for the restoration of the property was wrong.

The appeal, it seems to me, is bound to fail for more than one reason. Granting that the order is wrong, the appellant has no right of appeal. Under the facts, he cannot be regarded as a person aggrieved by the order for the restoration of the property, as he had not claimed the property before the order was made. The complainant was the only claimant at that time, and upon the

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facts as then before the Court the complainant was entitled to the property. The appellant, therefore, has no right of appeal. There is another reason why he has no right of appeal now. The order for the restoration of the property to the complainant was made in November, 1920. That is the order from which the appellant should have appealed. His petition of appeal was lodged on February 10. The petition is, therefore, out of time.

Again, in making the order for the restoration of the property to the complainant, the Magistrate did not act upon the provisions of section 413, but upon a well-recognized principle that where property is brought into Court as having been in the possession of a particular person upon an allegation that an offence has been committed in regard to such property, and the Court finds that no offence has been committed, it may order the restoration of the property to the person in whose possession it had been found. (*Katha v. Meera*,¹ *Thambipulle v. Ramaswamy*,² *Doloswala v. Eknelligodde*.³) In making such an order the Magistrate may also have acted under section 419 of the Criminal Procedure Code.

Section 413 of the Criminal Procedure Code appears to me to refer only to those cases in which there is a conflict of claims to the property brought into Court. In such cases the section provides that the Court may make such order as it thinks fit for the disposal of property produced before it, provided (1) the inquiry or trial is concluded before it, (2) the property is that regarding which any offence appears to have been committed, or to that which had been used for the commission of any offence.

This section does not, therefore, apply in this case, for the Magistrate held that no offence had been committed. The case of *Cassim v. Pitche*⁴ does not support the appellant's contention, because there the accused had removed the bull under a claim of right to its ownership. It was taken from his possession. The Magistrate had acquitted the accused. The Magistrate, therefore, had no right to order the bull to be delivered to the complainant as the accused claimed the animal, and section 413 did not apply, as no offence appeared to have been committed regarding the bull, nor had it been used for the commission of any offence.

I would, therefore, uphold the Magistrate's order for the restoration of the property upon the ground that he was entitled to make it upon the evidence before him that the property belonged to the complainant and were in his possession, and that it was not claimed by the appellant. I would dismiss the appeal for this and the other reasons I have given.

Appeal dismissed.

¹ (1898) 3 N. L. R. 90.
² (1909) 4 Bal. Rep. 89.

³ (1912) 7 S. C. D. 37.
⁴ 3 C. W. R. 204.