

1946

Present : Wijeyewardene J.

JOSEPH, Appellant, and THE ATTORNEY-GENERAL,
Respondent.

426—Application for revision in M. C. Colombo, 14,738.

Criminal Procedure Code, s. 413 (1)—Disposal of property under—Validity of such order where accused is acquitted—Evidence Ordinance, s. 24—Admissibility of confession for other purposes than as a confession.

Where an accused is acquitted on the ground that the evidence to prove the alleged offence is insufficient, the court can, nevertheless, by virtue of section 413 (1) of the Criminal Procedure Code, make an order for the disposal of the property produced before it by directing its delivery to a person entitled to its possession, if the court considers that an offence has been committed in respect of that property. The opinion of court as to the ownership of the property may be based on a confession made by the accused; section 24 of the Evidence Ordinance which makes confessions "irrelevant in a criminal proceeding" does not prevent a court from acting on them in an application under section 413 (1) of the Criminal Procedure Code.

APPPLICATION to revise an order of the Magistrate's Court, Colombo.

S. Alles (with him *C. J. Ranatunge*), for the petitioner.

A. C. M. Ameer, C.C., for the Attorney-General.

Cur adv. vult.

October 3, 1946. WIJEYWARDENE J.—

The first accused was the cleaner and the second accused was the driver of a motor lorry employed by the Co-operative Wholesale Establishment to transport 58 bags of Maldive fish from St. Sebastian Stores to New Maradana Stores. Acting on certain information received by him immediately after the lorry left the St. Sebastian Stores, Mr. Canagasuriya, the Chief Storekeeper of the Co-operative Wholesale Establishment, telephoned to the New Maradana Stores not to unload the bags of Maldive fish from the lorry but to inform him as soon as the lorry arrived at the New Maradana Stores. Shortly afterwards, Mr. Canagasuriya received information of the arrival of the lorry at the New Maradana Stores and he got the lorry driven back to St. Sebastian Stores under the supervision of two of his officers. The lorry was examined in the presence of the accused and it was found that there were only 48 bags of Maldive fish instead of 58 bags. In place of the ten missing bags of Maldive fish there were ten bags of "Maldive dust". Mr. Canagasuriya questioned the second accused who said "that ten bags of good Maldive fish were unloaded at a certain place and ten bags of dust were put in its place and that he got Rs. 2,000" and added that he acted in that way at the request of some other employees of the Co-operative Wholesale Establishment. The second accused then handed to Mr. Canagasuriya the bundles of notes containing Rs. 2,000. A little later the accused made written statements P 5 when Mr. Canagasuriya told them that he would otherwise hand them over to the Police.

The accused were charged before the Magistrate under section 367 of the Penal Code with the theft of ten bags of Maldive fish valued at Rs. 570 and the Police produced before the Magistrate the bundles of notes which were handed to them by Mr. Canagasuriya.

The Magistrate convicted the accused and made an order directing Rs. 570 to be paid to the Commissioner of Co-operative Development and confiscating the balance Rs. 1,430.

The conviction of the accused was set aside in appeal on the ground that there was insufficient evidence against the accused, as the confessions made by them were inadmissible under section 24 of the Evidence Ordinance.

After the acquittal, the second accused applied to the Magistrate for the return of the sum of Rs. 2,000 to him. The Magistrate refused that application and the second accused now brings up that order in revision before this Court.

Several Indian decisions (e.g., *Russul Bibee v. Ahmed Moosajee*¹ and *Kanaga Sabai et al. v. The Emperor*²) were cited before me in support of the argument that the Magistrate had jurisdiction to deal with the property even though the accused were acquitted. I find however, that these decisions have been given under section 517 (1) of the Indian Criminal Procedure Code, 1898, which conferred much larger powers on Courts even before its amendment of 1923 than section 413 (1) of our

¹ I. L. R. (1906) 34 Cal. 347.

² I. L. R. (1910) 34 Madras 94.

Code. Section 517 (1) of the Indian Code enacted before its amendment :—

“ When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any property or document produced before it or in its custody or regarding which any offence appears to have been committed, or which has been used for the commission of any offence ”.

Under that section a Criminal Court would, therefore, have jurisdiction to make an order in four classes of cases—

- (a) where property is produced before it,
- (b) where property is in its custody,
- (c) where there is property regarding which any offence appears to have been committed,
- (d) where the property has been used for the commission of the offence.

On the other hand section 413 (1) of our Code limits the jurisdiction of the Criminal Court only to two classes of cases—

- (a) where the property has been produced before it and an offence appears to have been committed,
- (b) where the property has been produced before it and the property has been used for the commission of any offence.

Section 413 (1) of our Code is identically the same as section 517 (1) of the Indian Code of 1882 and gives wider powers than section 418 of the Indian Code of 1872 which enacted—

“ when the trial in any Criminal Court is concluded, the Court may make such order as appears right for the disposal of any property produced before it, regarding which any offence appears to have been committed ”.

The decisions of the Indian Courts given under the Codes of 1872 and 1882 would, therefore, be helpful guides if they support the view taken by the Magistrate that he could act under section 413 in this case.

It has been held in a number of cases decided in India before 1898 (e.g., *Emperor of India v. Nilamba Babu* ¹) that where an accused is discharged or acquitted on the ground that the evidence to prove the alleged offence was insufficient, the Court could, nevertheless, make an order for the disposal of the property produced before it by directing its delivery to a person entitled to its possession, if the Court considered that an offence had been committed in respect of that property or that it had been used in the commission of an offence.

In the present case the statement made by the second accused to Mr. Canagasuriya and the written statements P 5 show clearly that an offence has been committed and that the accused have no claim to the sum of Rs. 2,000 which should be regarded as property within the meaning of section 413 (1) in view of the provision of section 413 (4). It is true that this Court has held these statements to be inadmissible in the criminal case against the accused. But section 24 of the Evidence Ordinance

¹ *I. L. R. (1879) 2 Allhbd. 276.*

which makes those statements "irrelevant in a criminal proceeding" does not prevent a Court from acting on them in an application under section 413 (1) of the Criminal Procedure Code which is not a "criminal matter" (vide *The King v. Mack*¹). A similar question came up for decision in *Queen-Empress v. Tribhovan*² and West J. said in the course of his judgment—

"Confession" in section 25 of the Indian Evidence Act of 1 of 1872 means, as in section 24, "a confession made by an accused person," which it is proposed to prove against him to establish an offence. For such a purpose a confession might be inadmissible which yet for other purposes would be admissible as an admission under section 18 against the person who made it (section 21) in his character of one setting up an interest in property, the object of litigation or judicial enquiry and disposal.

Section 413 (1) of the Criminal Procedure Code which empowers a Court to make such order "as it thinks fit" vests a discretion in the Court. The Magistrate has exercised his discretion according to sound judicial principles and I would, therefore, refuse this application.

Application refused.

