

**SUPREME COURT OF INDIA**

Pushkar Singh

Vs.

State of Madhya Bharat

CrI.A.No.22 of 1951

(Saiyid Fazl Ali,J., Mehr Chand Mahajan and Vivian Bose,JJ.)

18.09.1951

**JUDGEMENT**

**M.C.Mahajan, J.,**

1. This is an appeal by special leave against the judgment and order dated 4-12-1950 of the Madhya Bharat High Court in Criminal Revision No. 139 of 1950.

2. The appellant Pushkar Singh stood his trial for offences under Ss. 449 and 372, Gwalior Penal Code, before the Additional City Magistrate of Lashkar. The Magistrate held that no case was established against him and that the sum of money recovered from Pushkar Singh's house belonged to him. The prosecution evidence to the effect that Pushkar Singh brought the money from inside and gave it to the police was disbelieved and it was found that it could not be held that this money belonged to the complainant or appertained to the theft committed in his house. As a result of these findings Pushkar Singh was acquitted. As regards the articles and the money taken from Pueshkar Singh's house, it was ordered that they be returned to him after expiry of the period for appeal. The learned Sessions Judge dismissed an application for revision made to him by and on behalf of the complainant. Against the decision of the Magistrate ordering that the sum of Rs. 463 recovered from Pushkar Singh's house be returned to him. Mst. Kaushillya Bai, widow of the complainant, filed an application in revision in the High Court of Judicature of Madhya Bharat, Gwalior. The High Court allowed the application and ordered that amount of Rs. 463 be awarded to the complainant and not to Pushkar Singh.

3. It seems to us that this order cannot be sustained in view of the clear findings of fact given by the Magistrate to the effect that no offence was committed in respect of the sum of Rs. 463 and that it did not belong to the complainant. It was on the basis of these findings that Pushkar Singh was acquitted and the amount recovered from his house was ordered to be delivered to him. Unless it was found that an offence was committed in respect of this sum, there was no jurisdiction to the High Court to order the payment of this amount to Mst. Kaushillya Bai. We have not been able to appreciate the view of the High Court that though

the stolen property consisted of currency notes those notes may have been changed by the accused. There is no evidence to support this finding, and unless by due procedure of law the acquittal of the accused is changed into a conviction, the order for payment of the sum of Rs. 463 in favour of Mst. Kaushillya Bai cannot be sustained under the clear provisions of S. 517, Criminal P. C.

4. We therefore set aside the order of the High Court and restore the order made by the Magistrate in respect of the amount of Rs. 463 and direct Mst. Kaushillya Bai to pay, this amount to the petitioner. We make no order as to costs in these proceedings.

5. Appeal allowed.