

ORISSA HIGH COURT

Arjun Padhy

Vs

State of Orissa

Criminal Revn. No. 540 of 1963

(R.L. Narasimham, C.J.)

11.08.1964

ORDER

R.L. Narasimham, C.J.

1. This is a revision petition against the order of the Additional Sessions judge of Ganjam, declining to entertain an appeal under Section 520, Criminal Procedure Code, against that portion of the order of the Sub-divisional Magistrate of Ciatrapur in G. R. Case No. 386/60 directing delivery of three material objects M.Os. I, II and III (handas) to the complainant R.S. Panigrahi, after acquitting the accused persons in that case. The learned Additional Sessions judge thought that there was no right of appeal under Section 520, Criminal Procedure Code in view of the decision of this High Court reported in *Sharfuddin v. Sirajuddin*¹, It was urged before him and also reiterated before me that the said Orissa decision was itself based on *Talewar Jha v. Mool Chand*², which has been overruled by a subsequent Division Bench decision of the Allahabad High Court reported in *Ram Ahhilak v. State*³, Mr. Murty urged that the same view has been taken in *Shantaram Govind v. State*⁴, and in *Kanchanlal Somalal v. State*⁵, But he fairly cited before me a decision of the Punjab High Court reported in *Sheo Dan v. Pir Dan*⁶, where the view taken by the Orissa High Court in the aforesaid judgment has been followed. There is no doubt that there is conflict of judicial opinion as to whether the power under Section 520, Criminal Procedure Code, can be exercised in the absence of an appeal actually pending before the appellate Court. But in my opinion this question is academic here. Even if it be held that there was no right of appeal before the Additional Sessions Judge, as the matter has come up before me in revision I shall dispose it of on merits.

2. The finding of the trying Magistrate is to the effect that the 3 handas, Mos. J, II and III were in the possession of the complainant, that they were taken away by the accused persons and were subsequently recovered from their possession by the Police during investigation. He held, however, that the necessary dishonest intention was not established inasmuch as the Handas were really the property of the villagers though they were kept in the possession of the complainant. Hence, he thought that their, removal by the accused persons was not dishonest because they might have had an erroneous impression - that as the handas were the common property of the villagers they had a right to take

them away.

3. Here we are not concerned with the correctness or otherwise of the order of acquittal. The learned Magistrate directed that the handas should be returned to the complainant from whose possession. On his finding, they were removed by the accused persons.

4. Mr. Murty first contended that on the finding of the trying Magistrate that no offence was committed in respect of the said handas, the learned Magistrate had no jurisdiction to pass any order under Section 517, Cr P.C. According to him the language of Sub-Section (1) of that Section if properly construed would indicate that the jurisdiction of the Court to pass an order in respect of any property produced before it would arise only if it appears to the Court that an offence has been committed regarding that property or if the property has been used for the commission of any offence. There is however no justification for giving such a narrow construction to that Sub-Section. On the other hand, in *Ram Lal v. State*⁷, it was held that even though property produced before the Court has not been used in the commission of any offence, or in respect of which no offence has been committed, nevertheless the mere fact that it was produced before the Magistrate by the Police would invest him with authority to pass orders for its disposal. There is no subsequent decision taking a contrary view. Even in *Suleman Issa v. State of Bombay*⁸, on which Mr. Murty relied the learned Judges recognised the power of the Court under Section 517(1), Criminal Procedure Code, to confiscate any property in the custody of the Court though they observed :

"It is not every case in which the Court must necessarily pass an order of confiscation irrespective of the circumstances of the case."

I have therefore no doubt that the Magistrate had jurisdiction to pass an order under Section 517(1), Criminal Procedure Code, in respect of the three handas (M.Os. I, II and III) even though he held that no offence was committed with regard to them.

Undoubtedly, the general rule is that when a property is seized from a person and he is acquitted of the charge, that property should be returned to him. But this rule is itself subject to several exceptions depending on the circumstances of each case and no accused person can also claim as of right, that, the property seized from him should be returned to him, Here the clear finding of the Magistrate was that the property was in possession of the complainant. We are not here concerned with the question of ownership. It may be that the villagers, in general were the owners of the three handas, but they had been lawfully kept in the possession of the complainant. Once it is found that the accused persons took them away without permission and they were, subsequently recovered from their possession by the Police, the Magistrate was justified in directing the restoration of the handas to the complainant. Mr. Murty fairly cited *P. Chandriah v. Pamjwomi*⁹, where an earlier decision of the Madras High Court reported in *Muthiah Muthiraa v. Vairaperumal Muthirian*¹⁰, was referred to in which the special circumstances where property seized from an accused may not be returned to him have been enumerated. The present case would come within some of the exceptions mentioned in that Madras decision.

5. For these reasons, I am satisfied that the order of the trying Magistrate is neither illegal or improper.

6. The revision is dismissed.

Revision dismissed.

Cases Referred.

¹ AIR 1961 Ori 121

² AIR 1959 All 96

³ AIR 1961 All 544

⁴ AIR 1961 Madh Pra 1

⁵ AIR 1963 Guj 523

⁶ AIR 1963 Pun 167

⁷ AIR 1954 All 758 (para 16)

⁸ AIR 1954 SC 312

⁹ AIR 1960 And Prad 122

¹⁰ AIR 1954 Mad 214