

1898.  
January 6.

KATHA v. MEERA.

P. C., Ratnapura, 13,779.

*Criminal Procedure Code, s. 478—Disposal of property produced in Police Court—Application, on discharge of accused, to withdraw money realized by sale of property alleged to be stolen and deposited in Court—Magistrate's refusal to grant such application by complainant—Validity of order detaining proceeds sale.*

After certain perishable goods, which formed the subject of a charge of dishonest misappropriation, had been sold by order of the Police Magistrate and proceeds thereof brought into Court, he discharged the accused without proceeding with the inquiry, and refused an order to allow the complainant to draw the money in deposit till the result of a civil action, which the Magistrate suggested, should be known.

*Held* that there was no law justifying such procedure, and that if the Magistrate purported to act under section 478 of the Criminal Procedure Code, he was clearly in error, because he had not concluded the inquiry.

*Held* further that as the accused was the agent for the complainant and dealt with the goods seized and sold as such agent, the Magistrate had no power to detain the proceeds of the sale pending the result of a civil action.

**I**N revision. The facts of the case are fully set forth in the judgment of WITHERS, J.

*H. A. Jayawardana*, for petitioner in revision.

6th January, 1898. WITHERS, J.—

This is an application by one Omer Katha, complainant in P. C., Ratnapura, 13,779, to have an order of the Magistrate of that Court, made on the 27th November last, brought up in revision. The order complained of was a refusal to allow the complainant to take out of Court a sum of Rs. 1,128·45 deposited in Court under the following circumstances. The petitioner in revision on 10th September last charged one Kachchi Navoor Meera with the offence of theft or dishonest misappropriation of a number of cases containing tea grown on the petitioner's estate, which was in charge of the person accused.

For some reason or another (I am told by consent of parties) some of this tea was sold and the proceeds, amounting to the sum above-mentioned, were brought into Court.

The charge was not inquired into by the Magistrate, on the ground of the complainant's absence on the day fixed for the

inquiry. The complainant being absent on the day fixed, the accused was discharged, and the Magistrate recorded the opinion that it was a matter which should be decided by a Civil Court.

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By or against whom an action should be brought the Magistrate did not indicate, nor did he indicate what he thought the cause of action should be.

The order discharging the accused was made on the 11th November. On the 27th of that month the petitioner applied to the Magistrate for an order to have the proceeds sale of the tea paid to him. The Magistrate refused to make this order in these words: "Certainly not; the money will remain in deposit pending " the result of a civil action."

In making this order the Magistrate should have stated the section of the Code or law under which he decided to keep the money in deposit. In forwarding this case to be dealt with in revision the Magistrate gave no additional reason for the order complained of.

Unless he was acting under chapter XL. of the Criminal Procedure Code, I do not know by what law he governed himself. That chapter does not seem, however, to me to apply to the present circumstances.

Section 478 of the Criminal Procedure Code enacts that when an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal of any document or other property produced before it, regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

So far from the inquiry into this charge having been concluded, the inquiry was not proceeded with, because in the Magistrate's opinion the accused had committed no offence with regard to the tea which was sold, nor does the accused himself claim to be the owner of the tea claimed or the proceeds.

I understand his case to be that, as the complainant's agent of the estate above-mentioned, he consigned this tea to certain creditors of the estate in liquidation of claims which they had against the estate. This tea apparently did not reach the creditors. It was stopped by the complainant after he lodged his complaint, and he is now asking to have the proceeds delivered to him. As at present advised, I do not see why this application should not be allowed. I am not satisfied that the Magistrate had the power to detain the proceeds pending the result of some civil action.

I must therefore discharge the order in revision and direct the Magistrate to place the complainant in possession of the money in deposit.