

EDIRISINGHE
v.
WEERARATNE AND OFFICER-IN-CHARGE,
MONERAGALA POLICE

COURT OF APPEAL.

THAMBIAH, J. AND MOONEMALLE, J.

C.A. 1888/79 – M. C. MONERAGALA 8157.

FEBRUARY 13, 1984.

Code of Criminal Procedure Act, No 15 of 1979 – Scope of section 66 (1).

The accused 1st respondent had dishonestly withdrawn funds from the bank account of the Siyambalanduwa Matiwela Siri Parakum Co-operative Farm and had credited it to his private bank account. The balance of those funds lying to the credit of the accused 1st respondent at his Bank was listed in the list of productions in the case.

The prosecution made an application under section 66 (1) of the Code of Criminal Procedure Act, No. 15 of 1979, for the issue of summons on the Manager of the Bank to produce in Court the balance sum or to freeze the said account.

The Magistrate refused the application.

Held –

1 The provisions of section 66 (1) of the Code of Criminal Procedure Act are not restricted to a trial only but extend to any proceeding by or before the Magistrate's Court.

2. The order of the Magistrate refusing to issue summons on the Bank under section 66 (1) is not an appropriate order as then the accused will be able to enjoy the fruits of his crime. Justice requires that the bank account of the 1st accused-respondent should be freezed till the conclusion of all the proceedings in this case.

Cases referred to

(1) *Samaraweera v. Officer-in-Charge C.F.B. and A.G., (1976) 78 N.L.R. 385.*

(2) *In Re Jayakody, (1955) 58 N.L.R. 236.*

APPLICATION for revision of Order of the Magistrate's Court of Moneragala.

D S Wijesinghe for the petitioner.

A A de Silva with *K. Thiraganame* for the respondent.

March 9, 1984.

Cur. adv. vult.

MOONEMALLE, J.

This is an application for revision of an order made by the learned Magistrate of Moneragala in proceedings in which the accused 1st respondent was charged with offences of theft, forgery and criminal misappropriation. According to the report of the Officer-in-Charge, Moneragala Police Station, filed in the Magistrate's Court which forms part of the record, the allegation was that the accused 1st respondent, while he was the Secretary of the Siyambalanduwa Matiwela Siri Parakum Co-operative Farm had dishonestly withdrawn Rs. 35,000 from the bank account of this Co-operative Farm and had credited the same to his private account at the Siyambalanduwa Branch of the Bank of Ceylon. Of this sum of Rs. 35,000 the accused 1st respondent had withdrawn Rs. 9,000. The sum of Rs. 29,000 was listed in the list of productions. The prosecution made an application under section 66 (1) of the Code of Criminal Procedure Act, No. 15 of 1979, for the issue of summons on the Manager, Bank of Ceylon, Siyambalanduwa to produce in Court the balance sum of Rs. 29,000 lying to the credit of the accused 1st respondent's account or order the Manager to freeze the said account. The learned Magistrate made order refusing this application. The present application in revision is from this order.

Learned Counsel for the petitioner submitted that the provisions of section 66 (1) of the Code of Criminal Procedure Act, No. 15 of 1979, were wide enough to cover the present matter in issue and that otherwise, the accused 1st respondent will be left free to enjoy the fruits of his crime, and would render the provisions of section 425 (1) of the Code of Criminal Procedure Act nugatory. He cited the case of *Samaraweera v. Officer-in-Charge C.F.B. and A.G.* (1) in support. Learned Counsel for the accused 1st respondent on the other hand, contended that section 66 (1) entitled goods stolen to be brought to Court only if they are necessary for the purpose of prosecuting the charges. Therefore, he submitted that it was not incumbent on the learned Magistrate to order the Rs. 29,000 to be brought to Court. He also submitted that section 66 (1) had no application to proceedings under section 425 (1). He cited the case of *In Re Jayakody* (2) in support of his submissions.

In the case of *Samaraweera v. O.I.C. (C.F.B.) and A.G. (supra)*, the facts were that a sum of Rs. 25,000 deposited by the suspect petitioner to open a bank account was admittedly proceeds of sale of grey sheeting which the prosecution alleged was stolen property within the meaning of section 393 of the Penal Code. The charge against the suspect petitioner was one of cheating. During the investigations, on an application made by the police, the Magistrate made order directing the Bank to freeze the account of the suspect petitioner until the disposal of the case. An application in revision against that order was filed. Sirimanne, J. who delivered judgment in that case, after considering sections 74 (1), 96, 133 (1) and 262 of the Administration of Justice Law which was the law applicable at the time, held that the learned Magistrate's order was a lawful and appropriate order, although there was no special provision of law conferring a general power on a Magistrate to make orders freezing the bank account of any person. He was of the view that the facts of that particular case were so compelling as to warrant the making of such an order in view of the powers conferred on Magistrates by sections 74 (1), 96, 133 (1) and 262 of the Administration of Justice Law.

Section 74 (1) of the Administration of Justice Law required a Magistrate to assist the conduct of an investigation by making and issuing appropriate orders and processes of Court. Similar provisions are found in section 124 of the Code of Criminal Procedure Act, No. 15 of 1979. The provisions of section 96 of the Administration of Justice Law which empower a Court to order the search and production of stolen property or of property unlawfully obtained which are concealed, kept or deposited in any place are similar to the provisions found in section 70 of both the Code of Criminal Procedure Act and the old Criminal Procedure Code.

Section 133 (1) of the Administration of Justice Law reads thus :

" Whenever any court considers that the production of any document or other thing is necessary or desirable for the purposes of any proceeding by or before such court it may issue a summons to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it at the time and place stated in the summons. "

These identical provisions are found in section 66 (1) of the Code of Criminal Procedure Act and section 66 (1) of the old Criminal Procedure Code.

Similarly, section 262 of the Administration of Justice Law which provides for the disposal of property after trial is concluded, defines the property in subsection (3) regarding which an offence appears to have been committed to include also "any property into or for which the same may have been converted or exchanged," finds its counterpart in section 413 of the old Criminal Procedure Code, as well as in section 425 of the Code of Criminal Procedure Act.

In the case of *In Re Jayakody (supra)* the allegations in the plaint were that the 1st accused committed criminal breach of trust of an elephant valued at Rs. 7,000 and that the 2nd accused aided and abetted the 1st accused. On an application made by the police, the Magistrate made order under section 66 (1) of the old Criminal Procedure Code to issue summons on the 2nd accused to produce the elephant. In an application in revision, it was contended that the Magistrate had no jurisdiction to order the elephant to be produced. It was held that section 66 (1) provides that whenever any Court considers the production of any document or thing necessary or desirable for any proceeding, summons may issue: Basnayake, C. J. who was then A.C.J. in the course of his judgment stated "It is clear no such order can be made unless Court considers the production of the document or thing necessary. The Court can consider the production is necessary or desirable only upon material properly placed before it. *Here*, there is no material on record why it was necessary or desirable that the elephant should be produced for the purpose of trying charges against the accused. In the absence of such material the order cannot be sustained."

In the instant case before us, there was material on record (the report of the officer-in-charge, Moneragala Police Station) for the Magistrate to consider and form an opinion whether it was necessary or desirable that the Rs. 29,000 should be produced. Basnayake, A. C. J. considered the applicability of the provisions of section 66 (1) of the old Criminal Procedure Code only in connection with that particular trial. He did not consider the provisions of section 70 which deals with the search and production of stolen property or the provisions of section 413 which provides for the disposal of property after trial is concluded. On the other hand, Sirimanne, J. in the case of *Samaraweera v. O.I.C. (C.F.B.) and A.G. (supra)* considered sections 96 and 262 of the Administration of Justice Law which contain similar provisions

as in the said sections 70 and 413 respectively of the old Criminal Procedure Code. Further, nowhere in his judgment did Basnayake, A.C.J. state that an application under section 66 (1) is limited only to a case where the production of a document or thing is necessary or desirable to prosecute the charges. Such a narrow interpretation of section 66 (1) cannot be gathered from any part of the judgment of Basnayake, A. C. J. The words appearing in section 66 (1) "..... for the purposes of *any proceeding by or before such Court* it may *issue summons* to the *person in whose possession such document or thing is* believed to be, *requiring him to attend and produce it.....*", are clear and unambiguous, in that these provisions apply to *any proceeding by or before such Court* and are not confined to a trial only. These provisions of section 66 (1) of the old Criminal Procedure Code are similar to the provisions of section 66 (1) of the Code of Criminal Procedure Act which govern the present case. Therefore the provisions of section 66 (1) are not restricted to a trial only but extends to any proceeding by or before the Magistrate's Court which includes even the stage when, after the trial is concluded, the Magistrate has to make an order for the disposal of the property under section 425. If, indeed, the Rs. 29,000 is to remain in the accused respondent's bank account without any restrictions, and he is thereby free to operate on his account, the provisions of section 425 would be rendered nugatory, and he would be able to enjoy the fruits of his crime. Thus, having considered the provisions of sections 70 and 66 (1) and 425 of the Code of Criminal Procedure Act, I hold that in the circumstances of this particular case, justice requires that the accused respondent's bank account should be frozen till the conclusion of all proceedings connected with this case. I, therefore hold that the order of the learned Magistrate refusing to issue summons under section 66 (1) of the Code of Criminal Procedure Act is not an appropriate order. I allow this application, and I set aside the order of the learned Magistrate, and I direct him to issue summons under section 66 (1) of the Code of Criminal Procedure Act, No. 15 of 1979, on the Manager, Bank of Ceylon Branch Siyambalanduwa, Moneragala to freeze bank account No. 54 of the accused respondent till the final disposal of this case.

TAMBIAH, J.—I agree.

Application allowed.