

1918.

[IN REVISION.]

Present : Bertram C.J.

SILVA v. HAMID.

P. C. Colombo, 16,169.

Criminal Procedure Code, s. 413—Acquittal of accused—Disposal of property—Offence other than the offence tried committed by accused.

Where property has been stolen, and the charge is made against the person for receiving the property so stolen, even though the Magistrate acquits the person charged with so receiving it, he may, if he comes to the conclusion that the property actually was stolen, order it to be delivered to the person from whom it was taken, and disregard the possession of the receiver; or he may order the property to be retained in Court. But where it appears to the Magistrate that the offence which was the subject-matter of the trial was not committed, he cannot make an order for the disposal of property under section 413 of the Criminal Procedure Code, though it may appear to him incidentally that an offence was committed; the only proper course for the Magistrate to adopt is to return the property to the person in whose possession it was.

Aliter, where the offence, which appears to have been committed, only transpires incidentally, and is not, either directly or indirectly, the subject of the Magistrate's investigation. In such a case, the only proper course is to return the property to the person in whose possession it was.

The words "any offence" in section 413 of the Criminal Procedure Code mean "any offence which was either directly or indirectly the subject of the inquiry or trial."

THE facts appear from the judgment.

Abdul Cader, for the applicant.—The inquiry was not concluded. It was abandoned. The Magistrate had, therefore, no jurisdiction to make an order for the disposal of property under section 413 (1) of the Criminal Procedure Code. The party in possession is entitled to have the articles returned. *In re Deviden Durgaprasad*,¹ *Katha v. Meera*,² *Weerasinghe Mudalige Nona v. S. L. Mohamadu Lebbe et al.*,³ *Bose's Digest (1914) 138—Kedar Biswas v. Mathura Nath Mithra*.⁴

¹ (1897) 22 Bom. 844.

² (1898) 3 N. L. R. 90.

³ (1899) Kech's Reports 51.

⁴ 18 C. W. N. 959.

The Magistrate does not clearly hold that the property is stolen property. Moreover, the order in question was made in a connected but distinct case. The glue in question was produced as an exhibit in this case, and as the inquiry was not proceeded with the Court was not in a position to hold that any offence was committed regarding it. In most of the local decisions there was a clear finding that the articles were stolen, and in such cases the Supreme Court upheld the order for disposal of property under section 413 (1). The discretion of a Magistrate is open to correction by a higher Court. *In re Pandharinath Pundlik Revankar*.¹

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Canakarathne, for the respondent.—The acquittal or discharge of a person charged with receiving stolen property is not a bar to the making of an order like this. If the Magistrate comes to the conclusion that the property was stolen, he may order it to be delivered to the owner. The section confers on him a wide discretion, and he may, therefore, order the property to be retained in Court. This very glue was produced before the Court in the connected case, and there was sufficient evidence for the Magistrate to hold that an offence had been committed regarding it. *Empress v. Nilamber Babu*,² *Kanaga Sabai v. Ramamani*,³ *Podi Sinho v. Meya*.⁴

Abdul Cader, in reply.—In all these cases the order was made at the conclusion of the trial or inquiry. In *Podi Sinho v. Meya*⁴ there was a charge framed. Such was not the case here, and the inquiry cannot be said to have been concluded as required by section 413 (1). The words "any offence" in section 413 means the offence which is the subject of a particular inquiry or trial.

September 30, 1918. BERTRAM. C.J.—

This is an application to revise an order made by the Magistrate in case No. 16,006 with regard to one hundred and eighty-two pounds of glue produced as an exhibit in that case. The order of the Magistrate was in effect that the glue so produced in that case should be detained in Court pending the result of a civil action. There appears to be no doubt that, under section 413 of the Criminal Procedure Code, a Magistrate would have jurisdiction to make such an order. Where property has been stolen, and the charge is made against the person for receiving the property so stolen, even though the Magistrate acquits the person charged with so receiving it, he may, if he comes to the conclusion that the property actually was stolen, order it to be delivered to the person from whom it was taken, and disregard the possession of the receiver. That appears to be established by an Indian case handed up to me by Mr. Canakarathne—*Empress v. Nilamber Babu*.² See also *Kanaga Sabai*

¹ (1915) 40 Bom. 186.

² (1879) I. L. R. 2 All. 276.

³ (1910) I. L. R. 34 Mad. 94.

⁴ (1900) 4 N. L. R. 80.

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v. Ramamani.¹ If, therefore, a Magistrate can make an order ignoring the possession of the person acquitted to this extent, he can obviously make a less conclusive order, that is to say, he can order the property to be retained in Court.

The only difficulty I have in the matter is that the offence, which appeared to the Magistrate to have been committed with regard to the one hundred and eighty-two pounds of glue, was not an offence which was the subject-matter of the trial which was concluded, and in which the one hundred and eighty-two pounds of glue was produced. The Magistrate formed the conclusion that that one hundred and eighty-two pounds of glue was the subject of another offence, into which he was not at the time inquiring, and I have to determine whether it is competent to him, under section 413, to make an order for the disposal of property in regard to which it appears incidentally that an offence was committed, though not the offence then being tried. I think that I should be straining the section if I sanctioned this. It is impossible for a Magistrate to form any adequate opinion on the subject, unless he has the witnesses to this incidental offence before him and hears what has to be said by the persons interested. I think the words "any offence" in section 413 must mean any offence which was, either directly or indirectly, the subject of the inquiry or trial. It appears to me, therefore, that section 413 does not apply to the present case, and that any order the Magistrate made cannot be considered as having been made under the powers of that section.

We have, therefore, to consider what is the general position of the Magistrate, apart from that section, with regard to property produced in Court. The property is in the custody of his Court, and he must make some order in regard to it. Various cases have been cited to show that in such a case the only proper course for the Magistrate to adopt is to return the property to the person in whose possession it was. It appears to have been held that it is not right for him to direct that the property should remain in the custody of the Court pending a civil trial. That has been laid down in this court in the case of *Katha v. Meera*.² It has also been similarly held in an Indian case—*In re Deviden Durgaprasad*,³ There the Court said that if the Magistrate came to the conclusion that the case did not come within section 517 of the Indian Code, which corresponds to section 413 of our Code, the only order he can pass is to restore the previous possession. I think I should not be justified in disregarding these two authorities, and that, therefore, the order of the Magistrate should be revised, and that the order of this Court should be that the glue in question should be restored to the possession of the applicant in the present case.

*Set aside.*¹ (1910) *I. L. R.* 34 *Mad.* 94.² (1898) 3 *N. I. R.* 90.³ (1897) 22 *Bom.* 844.