

1953

Present: Swan J.

N. SOLOMON PERERA, Petitioner, and THOMAS FERNANDO,
et al., Respondents

S. C. 562—Application in Revision in M. C. Colombo, 33,031

Search warrant—Disposal of property taken thereunder—Requirement of notice to parties—Criminal Procedure Code, ss. 29, 77, 419.

Under section 419 of the Criminal Procedure Code an order for disposal of property brought into Court by an accused person in consequence of the issue of a search warrant can only be made after due notice to both complainant and accused.

APPPLICATION to revise an order of the Magistrate's Court, Colombo.

M. M. Kumarakulasingham, for the complainant petitioner.

H. W. Jayewardene, for the accused respondents.

Cur. adv. vult.

March 9, 1953. SWAN J.—

In this case the petitioner charged the respondents with theft of a lorry. The learned Magistrate issued a search warrant returnable on 13.11.1952. On 11.11.1952 the respondents produced the lorry in Court and the learned Magistrate made order allowing them to keep the lorry pending trial on giving security (personal) in a sum of Rs. 1,000.

The petitioner asks this Court to revise the order made by the learned Magistrate on the ground that it was made without notice to him. Mr. Jayewardene for the respondents contends that notice was unnecessary, that under Section 77 of the Criminal Procedure Code the Court had to "impound" the production, or return it to the accused who produced it. I do not think that Section 77 has any application. That Section provides for the impounding of documents. In my opinion Section 419 applies; and the Court should not have made any order without hearing what the complainant had to say. In *Costa v. Pieris*¹ de Silva A.J. held that an order for disposal of property seized under a search warrant could only be made after due notice to both complainant and accused. I think it makes no difference whether the property is seized and produced, or voluntarily brought into Court by the person against whom the search warrant has been issued.

Mr. Jayewardene submits that in view of the affidavit tendered by the 2nd accused-respondent I should not interfere. But the facts stated in that affidavit can only be considered at a proper inquiry where both parties are present. I set aside the order made by the learned Magistrate. The case will be remitted to the lower Court for an order to be made after inquiry of which notice must be given to both the complainant and the accused.

Sent back for further inquiry.

¹ (1933) 13 C. L. Rec. 73.