

1959

*Present : H. N. G. Fernando, J.*PUNCHINONA, Petitioner, *and* HINNIAPPUHAMY, Respondent*S. C. 437—Application in Revision in M. C. Galle 6,897**Criminal Procedure Code—Sections 413 and 419—Seizure by police of property suspected to have been stolen—How Magistrate should deal with such property.*

Where the seizure by a police officer of property alleged or suspected to have been stolen is reported to a Magistrate under section 419 of the Criminal Procedure Code, the Magistrate, if he does not consider "official" custody to be necessary, has no alternative but to order the property to be delivered back to the person from whose possession it was seized. The Magistrate has no power to order the property to be given to any other person on the ground that the latter is the true owner.

APPLICATION to revise an order of the Magistrate's Court, Galle.

C. G. Weeramantry, with *E. B. Vannitamby* and *H. Ismail*, for the petitioner.

Collin Mendis, for the respondent.

Cur. adv. vult.

January 23, 1959. H. N. G. FERNANDO, J.—

This is an application in revision against an order made by the learned Additional Magistrate of Galle in the following circumstances. On 10th October 1958, a car No. EN 2284 was produced by the Police before the Magistrate together with a report stating (1) that one Hinniappuhamy had made a complaint that while he was driving the car on 26th September 1958, some unknown person had forcibly taken possession of the car, and (2) that the car had subsequently been produced at the Moratuwa Police Station by the present petitioner who claimed to be the owner of the car having bought it from one Edward. In accordance with an application made in that behalf by the Inspector of Police, the Magistrate immediately ordered the car to be returned to Hinniappuhamy.

The only provision of law to which this order is referable is Section 419 of the Criminal Procedure Code. That section applies to property which is seized by a Police Officer (a) under Section 29 of the Code, or (b) when the property is alleged or suspected to have been stolen, or (c) when the property is found under circumstances which created suspicion of the commission of an offence. It is clear in this case that the car has not been seized either under Section 29 or found under circumstances referred to at (c) above. Although there is no evidence on the point, I will assume that the car was in fact seized after the petitioner produced it at the Moratuwa Police station and that the ground of the seizure was that it was alleged or suspected to have been stolen. Nevertheless, the Magistrate had no power to order possession of the car to be given to Hinniappuhamy. "When the property seized has been removed from the possession of a person, the Court has a larger discretion under Section 413 as to the order it can make than it has under Section 419. Under the latter section, it has either to return the property to the same person, or refuse to do so if it thinks it necessary to detain the property for the purposes of proceedings before it It has no power under the section to order property seized and removed from the possession of one person to be given to another person, because the possession of property cannot be lightly interfered with". (*Costa v. Peries*¹)

It is important to realize that Section 419 is not a provision which confers jurisdiction to decide disputed claims to possession. Its object is to provide for the Magistrate being brought with the least possible delay into official touch with the property seized by the Police (*Binduwa v. Tyrrell*²). If the Magistrate does not consider "official" custody to be necessary, he has no alternative but to order delivery back to the person from whose possession the property was seized.

¹ (1933) 13 C. L. Rec. 73.

² 4 C. A. C. I.

There would be more grounds than one which would justify an order under Section 419 "respecting the custody and production of property". One ground would be that neutral custody is expedient in order to ensure that property, the production in evidence of which is considered necessary in criminal proceedings, will be duly produced when required. Another ground would be that the Court is *prima facie* satisfied that, if the property is kept in custody pending an inquiry or trial, the claimant will be entitled at its conclusion to an order for delivery under Section 413. In the present case, however, there is nothing on the record to show that any criminal proceedings with respect to the alleged theft of the motor car had been instituted at the time when the car was produced before the Magistrate, nor was Counsel aware whether any such proceedings had been instituted prior to the hearing of this application. In the circumstances there was no material upon which an order for custody and production could have been duly made.

I set aside the Magistrate's order in so far as it authorises the continued possession of the car. In pursuance of that part of the order which requires the car to be produced upon notice from the Magistrate's Court, the Magistrate will now require production of the car. He will then consider whether "official" custody is necessary, and will in doing so have regard to the question whether any proceedings in respect of any alleged theft of the motor car have been instituted up to date against the petitioner or any other person. Failing an order for "official" custody, he will direct delivery of the car to the petitioner.

Order set aside.
