

THE INDIAN LAW REPORTS

REVISIONAL CRIMINAL

Before Bhandari, C.J.

AMAR NATH BHARDWAJ,—*Petitioner.*

versus

THE STATE OF DELHI,—*Respondent.*

Criminal Revision No. 128-D of 1953:

*Code of Criminal Procedure (V of 1898) Section 517—
Powers of Court under—Extent of—Rule as to the exercise
of such powers stated.*

1953

Nov. 12th

Held, that section 517 of the Code of Criminal Procedure confers a wide discretion on the Court to order the disposal of property regarding which an offence appears to have been committed or which has been used for the commission of an offence, but it must be remembered that the discretion is a judicial discretion and must be exercised in accordance with recognised judicial principles.

Petition under Section 435, 520 and 561-A Cr.P.C. for revision of the order of Shri D. R. Pahwa, 2nd Additional Sessions Judge, Delhi, dated the 25th May, 1953, ordering confiscation of the revolver.

B. S. MISRA, for Petitioner.

BISHAMBER DYAL, for Respondent.

JUDGMENT.

BHANDARI, C.J. The question which falls to be determined in the present case is whether the learned Additional Sessions Judge of Delhi was

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Amar Nath justified in ordering the confiscation of a certain
 Bhardwaj. revolver which is said to have been used for the
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 Delhi

Bhandari, C.J. On the 12th March, 1952, one Prem Nath is alleged to have stolen a revolver belonging to his father, the petitioner, and to have killed two of his relations with this weapon. He was convicted under sections 302 and 307 of the Penal Code and 19 (f) of the Indian Arms Act and the revolver which was used for the commission of the crime was ordered to be confiscated to the State. The order under Section 302 was upheld in appeal but the sentences under the remaining two sections were set aside. On the 19th April, 1953, the petitioner, who, as I have stated already, is father of Prem Nath applied for the return of the revolver but the learned Additional Sessions Judge dismissed his application for restitution on two grounds, viz. (1) that the order of confiscation had not been disturbed by the High Court ; and (2) that the loss of the weapon was due to the negligence or carelessness of the petitioner.

The learned counsel for the petitioner contends that the petitioner was the owner of the revolver in question ; that he was retaining this weapon in his possession under a licence granted to him by the appropriate authority ; that this licence was valid on the date on which the revolver was stolen ; that the revolver was taken away without his consent or knowledge ; that the petitioner lodged a report with the police in regard to the theft at the earliest possible opportunity, and that the revolver was later recovered from the possession of the petitioner's son. It is contended in the circumstances that it is inequitable that the petitioner should be penalised for an offence committed by his son

and that the revolver should be confiscated to the Amar Nath State when the prosecution have not endeavoured to prove either that the petitioner was negligent in the manner in which he had kept the weapon or that he had voluntarily assisted his son in the commission of the crime. The trial Court did not even take the elementary precaution of issuing a notice to the petitioner to show cause why the revolver should not be confiscated.

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There is, in my opinion, considerable force in the contention which has been placed before me. It is true that section 517 of the Code of Criminal Procedure confers a wide discretion on the Court to order the disposal of property regarding which an offence appears to have been committed or which has been used for the commission of an offence, but it must be remembered that the discretion is a judicial discretion and must be exercised in accordance with recognised judicial principles. In *re Khajasaheb* (1), a Division Bench of the Bombay High Court expressed the view that discretion should be exercised in favour of the person entitled to the possession of the property and that Government should not be allowed to take away the property so long as there is any one entitled to claim possession thereof. This view was endorsed by Abdul Qadir, J., in *Gobind Parshad v. Emperor* (2). There can be no doubt regarding the correctness of the principle propounded by these authorities but practical difficulties often arise in the application thereof to the facts of a particular case. No difficulty arises when, for example, goods are stolen and later used for the commission of a crime. In such a case the true owner is undoubtedly deprived of the possession of the goods but he is not deprived of the property in them

(1) (1900) 2 Bom. L. R. 768

(2) A.I.R. 1934 Lah. 247

Amar Nath and continues to remain the lawful owner. It is only reasonable, therefore, that the goods should be restored to him. Different considerations would, however, apply if, for example, the goods pass into the possession of the culprit not as the result of a theft but as the result of a misrepresentation. In such a case, the owner has parted not only with possession but also with the property in the goods. If they are produced before the Court as having been recovered from the possession of the culprit, the Court would be at liberty to direct that they should be restored to the owner on the ground that the contract between the owner and the culprit was vitiated by fraud. If, on the other hand, they are recovered not from the possession of the culprit but from the possession of a third person to whom they were sold by the culprit and who had no reason to suspect that the goods had been obtained by fraud and misrepresentation, the innocent purchaser is entitled to retain them and the Court should direct that they should be returned to him. When the Court is in doubt whether the order of restoration should be made or not, it should decline to make one and leave the owner to such civil remedies as may be available to him.

If the facts stated by the petitioner in the present case be true viz. that the son took the revolver away without the consent or knowledge of the father, it is obvious that the order of confiscation cannot be justified on any legal or moral grounds.

For these reasons, I would accept the petition, set aside the order under revision and remand the case to the Court below with the direction that a notice should issue to the petitioner to show cause why the order of confiscation

should not be made. After a reasonable opportunity has been afforded to him in this behalf, the Court should proceed to make an order in accordance with law. The parties have been directed to appear before the learned Additional Sessions Judge on the 30th November, 1953.

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