

(1937) 02 CAL CK 0004
In the Calcutta High Court
Case No : Criminal Appeal No. 834 of 1986

Maharaja Bir Bikram Kishore Manikya Bahadur

APPELLANT

Vs

The Emperor

RESPONDENT

Date of Decision : 03-02-1937

Acts Referred:

Citation : (1937) 02 CAL CK 0004

Judgement

Jack, J.—The Petitioner appeals against an order passed by the Assistant Sessions Judge of Tippera under sec. 517 of the Code of Criminal Procedure in connection with a sum of Rs. 1,899-5-0 found at the time of his arrest on the person of a man who was subsequently convicted of a dacoity and under suspicious circumstances. In the dacoity Rs. 887-14-3 in cash was stolen as well as jewellery and other articles worth Rs. 1,377-10-0. This application is against the order under sec. 517 of the Code of Criminal Procedure confiscating the entire amount to Government. It is on behalf of the owners of the property stolen in the dacoity, claiming that the amount should be paid to them inasmuch as the circumstances show that it was money stolen in the dacoity or received by sale of articles stolen therein.

2. There was a preliminary point raised that the order under sec. 517 was not appealable, but I hold that an appeal lay under sec. 520 of the Code of Criminal Procedure. In this connection the cases of Banuruddin Biswas v. Gani Mia Sawdagar 40 C. W. N. 287 (1035) and Ramphal Iatwa v. Jasodia Malani 40 C. W. N. 862 (1936) have been referred to.

3. The learned Assistant Sessions Judge in disposing of an application for refund of the money to the Petitioner, appears to have been influenced by entries on a slip of paper which were not evidence inasmuch as they were not proved, and there appears to be no evidence that the slip was found (as the learned Judge asserts) in possession of the accused, nor is it clear that it shows the receipt of Rs. 6,000 and the disposal of all but Rs. 1,700 or that it was on account of the proceeds of several dacoities.

4. In these circumstances I think this case should go back for further enquiry. The order under sec. 517 of the Code of Criminal Procedure is set aside and the matter is referred back to the Sessions Judge who should pass an order for disposal of the money after proper judicial consideration. If the circumstances show that the money or any part of it must have been the proceeds of this dacoity, this amount should be given to the owners of the stolen property.