

IN THE COURT OF APPEAL OF THE SUPREME COURT OF
JUDICATURE

APPELLATE JURISDICTION

G U Y A N A

CIVIL APPEAL NO. 120 OF 2000

BETWEEN:

SHEIK ALI

Appellant

- and -

**THE ATTORNEY GENERAL
OF GUYANA**

Respondent

BEFORE:

Hon. Madam Justice Desiree P. Bernard - Chancellor
Hon. Madam Justice Claudette M.C. Singh - Justice of Appeal
Hon. Mr. Justice Winston Moore - Additional Judge

Mr. Rex Mc. Kay, SC with Mr. Hukumchand for Appellant
Mr. A. Chase, SC with Ms. D. Young & Ms. P. Chase for Respondent

2004: December 13, 20

2005: March 4

J U D G M E N T

BERNARD, C.:

Before embarking on a discussion of the issues raised in this appeal it is necessary to analyse and consider the events which preceded it.

The Appellant, Sheik Ali, was an authorised dealer in gold, and in 1997 was the holder of an authorisation from the Guyana Gold Board to possess, sell and export gold until its expiry on 30th April, 1998. In the said month of April he made a report to the police that four gold bars (217 ounces) belonging to him had been stolen on 30th March, 1998. Two persons were later arrested and charged with larceny of the said gold bars, but it does not seem as if the charges were pursued.

During the currency of the investigation the Appellant made an application to the Magistrate's Court under Section 69 of the Police Act, Cap. 16:01 for an order that the gold be delivered to him. From the records on file it seems that this application was filed on 10th June, 1998 and was first called before the Chief Magistrate on 11th June, 1998. A copy seems to have been given to one Inspector Peters who was the Court Prosecutor, and then fixed for 16th June, 1998. There is no record that anyone appeared for the Police on 16th June, and the Chief Magistrate made an order that the Police return 217 ounces of raw gold to the Appellant having been satisfied that it was his property.

On 1st July, 1998 the police filed a notice of appeal against the said Order of the Chief Magistrate, but on 24th July, 1998 this was struck out by the Full Court as having been filed out of time.

The next strand in this fabric of events is that the Appellant filed in the High Court an application for a writ of mandamus against the Commissioner of Police who had not complied with the order of the Chief Magistrate, and on 8th July, 1998 **Ramgopal, J.** granted an order nisi of mandamus compelling the Commissioner of Police to show cause why the said order should not be made absolute. This was made returnable for the morning of 15th July, 1998, but no one appeared for or on behalf of the Commissioner of Police, and despite an adjournment granted to the afternoon of 15th July, no one still having appeared, the learned judge made the order absolute.

On 17th July, 1998 a notice of appeal to the Court of Appeal against the order of **Ramgopal, J.** was filed on behalf of the Commissioner of Police, but was withdrawn on 3rd August, 1998. While the appeal was pending an application was made by the Commissioner of Police on 22nd

July, 1998 to **Ramgopal, J.** for a re-hearing of the writ of mandamus but on 20th August, 1998 this was refused.

However, on 25th August, 1998 a notice of appeal was filed by the Police against the refusal by **Ramgopal, J.** of the order for a re-hearing.

Prior to both the refusal of the order for re-hearing and the notice of appeal against its refusal, the Police through Senior Superintendent Philbert Adams, on 4th August, 1998 filed an application in the High Court for writs of certiorari and prohibition against the original order of the Chief Magistrate, and on 7th August, 1998 orders nisi were granted by **Kissoon, J.** After a hearing the said orders were made absolute on 4th December, 2000, and the order of the Chief Magistrate set aside. We are now required to decide on the appeal from these orders.

One of the main issues in this appeal relates to **Section 69 of the Police Act, Cap. 16:01** as amended by Act No. 15/1983 and as such I shall set it out verbatim:

“Where any property has come into the possession of the police in connection with any criminal charge or as the result of any search carried out by a member of the Force, a court of summary jurisdiction may, on the application either by an officer or by a claimant of the property, make an order for the delivery of the property to the person appearing to the court to be the owner thereof, or, if the owner cannot be ascertained, for the property to be dealt with in the manner provided by Section 68”.

Section 68 provides for sale of unclaimed articles in the hands of the Police to be sold at public auction.

The Section empowers a court of summary jurisdiction to make an order for the delivery of property in the possession of the Police in connection with any criminal charge upon the application of either the Police or anyone whom the Court is satisfied is the owner of the property.

It does not specifically provide that the parties involved be heard at an inter partes trial before the order is made neither does it provide at what stage of a criminal investigation the application can be made, e.g. after a conviction or acquittal of someone under a criminal charge in connection with the property taken by the police in its investigations. The literal wording of the Section seems to suggest that the order can be made at any time after the property has been taken into the possession of the police. Research indicates that a similar provision existed in the English Police (Property) Act 1897 on which I am certain ours was based. On the issue as to whether the application needs to be served on anyone I found a very interesting and instructive passage in the judgment of **Holroyd Pearce, L.J.** in Irving v. National Provincial Bank (1962) 1 ALL E.R., 157 at page 159 which involved a claim under the Police (Property) Act, 1897 though not under identical circumstances. During the course of his judgment **Holroyd Pearce, L.J.** speaking about the said Act observed:

“It provides practical machinery to deal with a practical situation. It does not provide machinery as elaborate as that of interpleader. It does not even provide that the prisoner from whom the goods are taken must be served, though no doubt, the court will always notify him. The Act is not providing a final and scientific decision between conflicting claims ...”
(underlining mine).

Willmer, L.J. in the course of his judgment in the same case observed:

“Although it is not a requirement under the Act, I apprehend that, in any case in which there is a dispute, an order would not normally be made without hearing a person who claims to have an interest in the property in question.”

