

CRIMINAL REVISION.

Before Panckridge and M. C. Ghose JJ.

ASHWINIKUMAR DAS

1932

Jan. 28.

v.

SHASHANKAMOHAN BASU.*

*Restoration—Restoration of property after one month, if without jurisdiction—
Code of Criminal Procedure (Act V of 1898), s. 522.*

Section 522 of the Code of Criminal Procedure specifically limits the power of a magistrate to direct the restoration of any immovable property to any time within one month from the date of the conviction.

Any such order after one month is without jurisdiction.

RULE in favour of the accused.

The material facts appear from the judgment.

Debendranarayan Bhattacharya for *Lalitmohan Sanyal, Sateendranath Ray Chaudhuri* and *Nirmalkumar Mitra* for the petitioner.

Sateendranath Mukherji, Prakashchandra Pakrashi and *Beerendranath Mitra* for the opposite party.

PANCKRIDGE J. This Rule must be made absolute.

It appears that the petitioner was convicted of an offence punishable under section 448 of the Indian Penal Code on the 23rd of February, 1931. On the 7th of March, the opposite party filed a petition before the learned Presidency Magistrate asking him to pass an order under section 522, sub-section (1) of the Code of Criminal Procedure directing that he should be restored to possession of the room in question. Apparently, when the application came on for hearing, the petitioner pointed out that an appeal had been filed against the order of conviction and he succeeded

*Criminal Revision, No. 1035 of 1931, against the order of S. P. Sarbadhikari, Hony. Presidency Magistrate, Calcutta, dated Nov. 2, 1931.

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in inducing the learned magistrate to adjourn the case until after the disposal of the appeal. On the 3rd of July, 1931, the appeal was dismissed. The opposite party again applied, apparently on the 14th of September, 1931, for the order for which he had already asked on the 7th of March, and on the 2nd of November, 1931, the magistrate made the order asked for. It is clear to us that the magistrate had no jurisdiction to make the order, as the section specifically limits his power to do so to the time when he convicts an accused person or to any time within one month from the date of such conviction. It is abundantly clear, therefore, that the magistrate's jurisdiction had long ceased to exist on the 2nd of November, 1931, and no conduct on the petitioner's part could extend the jurisdiction conferred by the statute. We regret having to come to this decision, as it appears to us, on the facts, that the petitioner is not entitled to the possession of the room and that the opposite party is entitled to such possession, though he cannot obtain it under the provisions of section 522. All this trouble could have been avoided had the opposite party applied for the order at the time when the petitioner's appeal was dismissed by the High Court, for it is clear under sub-section (3) of section 522 that this Court had ample jurisdiction then to make the order required.

The Rule is made absolute and the order of the magistrate is set aside.

GHOSE J. I agree.

Rule absolute.

A. C. R. C.