

## APPELLATE CRIMINAL.

*Before Sir Charles Arnold White, Chief Justice.*

BATAKALA POTTIAVADU AND ANOTHER, PETITIONERS.\*

1902.

February 19.

*Code of Criminal Procedure—Act V of 1898, s. 552—Order for restoration of possession of immoveable property—Conviction of accused on charge of criminal trespass—No finding of use of criminal force—Legality of order for restoration.*

Certain persons were convicted of having committed criminal trespass on a piece of land, under section 447 of the Indian Penal Code. There was no finding that they had used criminal force, or that the complainant had been dispossessed of the land by such force. An order was subsequently made, which purported to be under section 522 of the Code of Criminal Procedure, directing the accused to restore possession of the land. On a revision petition being preferred against this order:

*Held*, That as there was no finding that criminal force had in fact been used, or that complainant had been dispossessed of the land by it, and as criminal force was not an ingredient of the offence for which the accused had been convicted, the order was made without jurisdiction.

ORDER for restoration of immoveable property, under section 522 of the Code of Criminal Procedure. Petitioners had been convicted, by the second-class Magistrate of Tekkali, on a charge of criminal trespass, under section 447 of the Indian Penal Code. The case for the prosecution was that those petitioners, with others (who were charged with them but acquitted), had unlawfully entered upon land which was in the possession of the complainant and ploughed it up. Complainant stated that the land had been delivered to him by the Court amin a month before the accused trespassed on it. The accused stated that the land in dispute had been in their possession, and they denied the alleged delivery to the complainant by the Court amin. The Magistrate inflicted nominal fines. An order was subsequently made, which purported to be under section 522 of the Code of Criminal Procedure, by which the accused were to restore possession of the land. A revision petition was presented to the Sessions Judge, who rejected it on the ground that no substantial injustice had been done,

\* Criminal Revision Petition No. 489 of 1901, preferred under sections 435 and 439 of the Code of Criminal Procedure against the proceedings of the Second-class Magistrate of Kasilinga in Proceedings No. 138 of 1901 in Calendar Case No. 354 of 1900.

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though the order was irregular inasmuch as no criminal force had been used in the course of the trespass. Petitioners now filed this criminal revision against the order of the second-class Magistrate.

*V. Ramesam* for petitioners.

JUDGMENT.—In this case the petitioners were convicted of an offence under section 447 of the Indian Penal Code (criminal trespass), and an order was subsequently made which purported to be under section 522 of the Code of Criminal Procedure. The question is, was this order under section 522 a legal order or is it bad as having been made without jurisdiction? The conditions precedent that must exist before an order can be made under section 522 are (1) some person must have been convicted of an offence “attended by criminal force and (2) some person must have been dispossessed of immoveable property by such force.”

It is clear that the use of the criminal force is not a necessary ingredient of an offence under section 447 of the Indian Penal Code. The Calcutta High Court have held that an offence attended by criminal force “means an offence of which criminal force is an ingredient (*Ram Chandra Borai v. Jityandria*(1)). I am inclined to think that this is too narrow a construction to place on the very general words “attended by criminal force.” In the present case, however, there is no finding by the Court which convicted the petitioners that any criminal force was in fact used by the petitioners or that the complainant was dispossessed of the land by such force. This being so, and criminal force not being an ingredient of the offence for which the petitioners were convicted, I think the order which purported to be made under section 522 of the Code of Criminal Procedure was made without jurisdiction and must be set aside. I order that petitioners be restored to possession.

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(1) I.L.R., 25 Calc., 434.

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