

1902  
August 21.

Before Mr. Justice Burkitt.  
EMPEROR v. MADAR BAKHSH.\*

*Criminal Procedure Code, section 438—Revision—Practice—Reference by  
District Magistrate questioning an order of acquittal.*

The High Court will not ordinarily entertain a reference under section 438 of the Code of Criminal Procedure, the object of which is to have an order of acquittal passed by an inferior Court set aside.

IN this case one Abdul Ghani Khan, the servant of a zamindar, filed a complaint in the Court of a Tahsildar Magistrate to the effect that a certain tenant of the zamindar, by name Madar Bakhsh, who had been evicted by due process of law from his holding, had re-entered upon the holding from which he had been evicted and had cut the crop that was growing thereon, and forcibly resisted attempts made to prevent him so doing. The complainant charged Madar Bakhsh and those with him with theft. Madar Bakhsh pleaded that the ejection proceedings had been taken behind his back, and that he knew nothing about them; and he claimed to have sown the crop, and to be entitled to cut it. The Tahsildar entertaining doubts as to whether the ejection proceedings against Madar Bakhsh were not fraudulent and collusive, and inclining to the opinion that they were, acquitted Madar Bakhsh.

The District Magistrate, disagreeing with the findings of the Tahsildar, reported the case through the Sessions Judge to the High Court for orders under section 438 of the Code of Criminal Procedure. On this reference the following order was passed:—

BURKITT, J.—This is a reference in revision, the object of which is to induce this Court to set aside the acquittal of Madar Bakhsh. I decline to entertain such an application on the revisional side. If the Local Government desire to appeal from the acquittal, section 417 of the Code of Criminal Procedure is open to it. Let the papers be returned.

(See also *In the Matter of Sheikh Aminuddin*, I. L. R., 24 All., 346—ED.)

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\* Criminal Revision No. 510 of 1902.