

1913

WALIDAD
KHAN
v.

JANAK SINGH.

1913

April, 13.

appeal to its original number in the register and dispose of it according to law. Costs of this appeal will be costs in the cause.

Appeal decreed and cause remanded.

REVISIONAL CRIMINAL

Before Mr Justice Ryves.

EMPEROR v. AZMAT SHAH KHAN AND OTHERS.*

Criminal Procedure Code, sections 517 and 520—Appeal—Jurisdiction—Power of appellate court to pass orders regarding property in respect of which an offence has been committed

Held that section 520 of the Code of Criminal Procedure gives to an appellate court the same power as the court which originally tried a case to pass orders under section 517 of the Code. *Baloram Gogai v. Ohintaram Kohla* (1) followed. *In re Devidin Durgaprasad* (2) distinguished.

IN this case two persons named Azmat Shah and Krishnanand were given licences to manufacture *katha* (catechu) in a village and both of them put down pits for that purpose. There was a dispute between the two as regards the *katha* manufactured, and Azmat Shah forcibly took possession of it from Krishnanand and in doing so caused wrongful restraint to certain persons who were opposed to his doing so. Azmat Shah and some others were convicted by the court of Assistant Sessions Judge of Bareilly and sentenced to three years' rigorous imprisonment each. On appeal to the Court of the Sessions Judge the conviction was upheld but the sentences passed were reduced. The appellate court further ordered that as it was not satisfied that the whole of the *katha* recovered was that taken from Krishnanand, the parties were to be left to establish their claims to it in the Civil Court. The accused applied to the High Court in revision.

Mr. C. Ross Alston, for the applicants.

The Assistant Government Advocate (Mr. R. Malcomson), for the Crown; Mr. A. H. C. Hamilton, for the opposite party.

RYVES, J:—On the facts found in this case I cannot interfere with the conviction. But I think that the sentence, even as modified by the learned Sessions Judge, is under the circumstances of the case unnecessarily severe. I accordingly maintain the

*Criminal Revision No. 192 of 1913 from an order of H. N. Wright, Sessions Judge of Bareilly, dated the 10th of February, 1913.

(1) (1904) 9 C. W. N., 549.

(2) (1897) L. L. R., 22 Bom., 844.

conviction, but reduce the sentence on Azmat Shah to one of six months' rigorous imprisonment and on Abdul Hakim, Najibullah, Asghar Husain, Wahidyar Khan, and Abdulla to one of three months' rigorous imprisonment each.

Mr. Hamilton has argued that the concluding words of the appellate court's order are *ultra vires*. The learned Sessions Judge says:—"I am not satisfied that the whole of the *katha* (catechu) recovered was that taken from Krishnanand and the parties will be left to establish their claim to it in the Civil Court." It is argued that under section 517 of the Criminal Procedure Code the only court that could pass orders under that section was the court trying the case, and reliance is placed on *In re Devidin Durgaprasad* (1). This decision, however, was passed before the present Code of Criminal Procedure came into force. It seems to me that section 520 gives an appellate court full power to pass such an order. The same view was taken by the Calcutta High Court in *Baloram Gogai v. Chintaram Kohla* (2).

Application rejected.

Before Mr. Justice Tudball.

EMPEROR v. NANNA MAL.*

Act (Local) No. 1 of 1900 (United Provinces Municipalities Act), section 88—Municipal Board—Power of Board to order demolition of structure overhanging a public road—Compensation—Offer to pay compensation not a condition precedent to order for demolition.

The owner of a house to which was attached a balcony overhanging a public road repaired the balcony, which had become dilapidated, and made it serviceable, but without obtaining the permission of the Municipal Board thereto.

The board thereupon issued notice to the house-owner under section 88 of the Municipalities Act, 1900, to remove the balcony, and, in default of compliance, prosecuted him.

Held that the board had power, under section 88, clause (2) of the said Act, to order the removal of the balcony without assigning any reason, and that it was not necessary for the board, in the case of a notice issued under section 88, to tender or express its willingness to pay compensation in respect of the structure the demolition of which was ordered.

THE facts of this case were as follows:—

One Nanna Mal was the owner of a house in the town of Hathras. There was a balcony attached to this house overhanging a

* Criminal Revision No. 804 of 1912 from an order of Muhammad Nur-ul-Hasan Khan, Magistrate, first class, of Aligarh, dated the 11th of June, 1912.

(1) (1897) I. L. R., 22 Bom., 844.

(2) (1904) 9 C. W. N., 549.

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