

before exercising the power vested in the Magistrate he should have taken some trouble to satisfy himself that the statement of the complainant was based on reasonable grounds. I do not find any such grounds on the record. I do not consider it proper to say anything more on the subject as it may possibly prejudice the Magistrate who has no opportunity of clearing his position before me

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G. A. ST.
GEORGE
v.
UMA
DUTT
SHARMA

Before Mr. Justice Ismail

EMPEROR v. NIHAL SINGH*

1939
June, 21

Criminal Procedure Code, section 522—Order for restoration of possession of immovable property—Time limit for passing such order.

There is no limitation of one month from the date of the conviction for passing an order under sub-section (3) of section 522 of the Criminal Procedure Code, as there is for an order under sub-section (1). So, where an order for restoration of possession of the immovable property was passed by the Magistrate more than one month after the conviction under section 447 of the Indian Penal Code, the High Court in revision set aside that order and itself passed an order for the restoration of possession.

The applicant was not represented.

The Deputy Government Advocate (Mr. Sankar Saran), for the Crown.

Mr. E. V. David, for the opposite party.

ISMAL, J.:—This is a reference by the learned District Magistrate of Muttra recommending that the order of the Magistrate for restoration of possession of certain immovable property be set aside. It appears that one Salig Ram brought a complaint against Nihal Singh and others under sections 447 and 352 of the Indian Penal Code. On the 30th of September, 1938, Nihal Singh was convicted under only one count, namely section 447 of the Indian Penal Code and sentenced to a fine of Rs.15. The other accused were acquitted.

*Criminal Reference No. 196 of 1939.

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On the 10th of October, 1938, i.e., within one month of the order of conviction, Salig Ram applied for restoration of possession of property to the Magistrate. No orders were passed till the 5th of November when the application was granted and possession was restored to the complainant. Salig Ram is now in possession. The present application was made by Nihal Singh on the ground that the order of restoration passed by the Magistrate was beyond his jurisdiction. Under section 522, sub-section (1) any person who has been dispossessed of any immovable property may be restored to the possession of the same by the court concerned either at the time of convicting the accused or at any time within one month from the date of the conviction. As the order of the Magistrate was beyond time, it must be set aside as recommended by the learned District Magistrate. I, however, feel that it will be anomalous to place Nihal Singh in possession of the property which, according to the decision of the Magistrate, belonged to Salig Ram. Nihal Singh apparently was satisfied with the order of the Magistrate and did not move the higher courts to have the order reconsidered. It does not appear that he has brought any civil suit for a declaration of his right. Under these circumstances it appears to me desirable that in the exercise of my revisional jurisdiction I should order Salig Ram to be restored to the possession of the immovable property which was the subject-matter of dispute in the case before the Magistrate. This is permissible under section 522, sub-section (3) which provides: "An order under this section may be made by any court of appeal, confirmation, reference or revision." There is no limitation of one month for an order under sub-section (3). This view is in full accord with the observations of JWALA PRASAD, J., in *Rameshwar Singh v. King-Emperor* (1). In the above mentioned case the learned Judge observed: ". . . Thus, where a Magistrate passes an order under section 522:

(1) (1925) I.L.R. 4 Pat. 438.

beyond the prescribed one month, though the order by the Magistrate is illegal, yet it is competent to the High Court as a court of revision to order the restoration of possession to the person dispossessed."

I, therefore, set aside the order of the Tahsildar Magistrate, dated the 5th of November, 1938. I further direct that Salig Ram be restored to the possession of the property from which he was wrongfully dispossessed by Nihal Singh. Let the record be returned.

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 EMPEROR
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Before Mr. Justice Mulla

EMPEROR v. BANSIDHAR AND OTHERS*

 1939
 July, 7

Criminal Procedure Code, sections 367, 424—Judgment of appellate court—Requirements—Should set out points urged, decisions thereon and reasons therefor.

Under section 424 read with section 367 of the Criminal Procedure Code the judgment of an appellate court should state the various points urged and the decisions thereon together with the reasons for those decisions. Criminal appellate courts should bear in mind that they are also subordinate to higher courts, and it is their duty to satisfy the higher courts by their judgments that they have applied their minds to the points arising in the case before them and have arrived at their own independent judgment in respect of them; and failure to fulfil these ejections of the law renders their judgments liable to be set aside.

The applicants were not represented.

The Assistant Government Advocate (Mr. *Vishwa Mitra*), for the Crown.

MULLA, J.:—This is a reference by the learned Sessions Judge of Jhansi drawing the attention of this Court to a judgment recorded by the learned District Magistrate of Jalaun in an appeal made before him by seven persons who were convicted by a Magistrate of the second class of offences under sections 147 and 355 of the Indian Penal Code. The learned Sessions Judge has suggested without making a specific recommendation to that effect that the judgment of the learned District

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Magistrate should be set aside and that he should be directed to re-hear the appeal and to record a proper judgment. The judgment of the learned District Magistrate to which objection has been taken by the learned Sessions Judge runs as follows:

“This is an appeal against an order of a Special Magistrate of the second class, Orai, in a case under sections 355 and 147 of the Indian Penal Code. Seven persons were convicted and all of them appealed. I have given a patient hearing to the learned counsel for the appellants. Not a single new thing has been said in this court. Almost all the points advanced by the learned counsel for the appellants have been discussed in the judgment of the court below. In my opinion, the court below has not erred in its findings. If anything, the learned Magistrate was lenient to the accused persons. I dismiss the appeal and further order that all the appellants be bound down under section 106 of the Criminal Procedure Code for one year (after the release of the accused persons sentenced to imprisonment) and each accused person will have to furnish a surety for Rs.100 to keep the peace.”

The objection taken by the learned Sessions Judge is that this judgment does not fulfil the provisions of section 424 read with section 367 of the Criminal Procedure Code.

Having considered the judgment of the trying Magistrate as well as of the learned District Magistrate, I have not the least hesitation in agreeing with the view taken by the learned Sessions Judge. The judgment written by the learned District Magistrate obviously fails to fulfil the conditions of section 424 read with section 367 of the Criminal Procedure Code. The portion of the latter section which is relevant for the purposes of the argument provides that a judgment of a criminal court “shall contain the point or points for determination, the decision thereon and the reasons for the decision.” This provision is made applicable to the judgments of the appellate courts by section 424. It would be well for District Magistrates who hear appeals in criminal cases to bear in mind that they are also subordinate to higher courts and it is their duty to satisfy the higher

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courts by their judgments that they have applied their minds to the case before them, and in recording a finding of conviction upon the evidence produced before them have arrived at a correct conclusion. In order to discharge this duty it is necessary for them to see that their judgments fulfil the requirements laid down by the law. It is always easy for the appellate court to say that all the points arising in the case have been considered by the court below and have been rightly decided. This does not, however, show that the appellate court has applied its mind to the points arising in the case and has arrived at its own independent judgment in respect of them as it is required by the law to do. In the present case I have carefully perused the judgment of the trying Magistrate which covers seven typed pages and I find that the prosecution story and the evidence produced by the prosecution is by no means overwhelming or of such a character as to leave no room for doubt. It is quite evident that several points arise for consideration relating to the inherent merit of the prosecution story and the credibility of the evidence by which it is sought to be supported. Some of these points have been considered by the trying Magistrate and it is not for me to say whether the findings arrived at by him are right or wrong. The fact remains that the case demanded some consideration on the part of the appellate court, but the judgment of the learned District Magistrate does not show that he gave the case the consideration which it deserved. Under the law it was clearly his duty to state the various points urged before him and to record his decisions thereon with his reasons for those decisions. He has entirely failed to discharge that duty and I am therefore of the opinion that his judgment must be set aside. I therefore accept this reference and direct that the case shall be sent back to the learned District Magistrate of Jalaun for re-hearing the appeal and for recording a proper judgment as required by the law.