

REVISIONAL CRIMINAL.

Before Jwala Prasad, J.

RAMESHWAR SINGH

v.

KING-EMPEROR.*

1925.

Jan., 15.

Code of Criminal Procedure, 1898 (Act V of 1898), section 522—House-trespass by members of unlawful assembly—conviction—order restoring possession of house seized, legality of—order passed more than one month from the date of conviction—power of High Court in revision to restore possession.

Where certain persons had succeeded in taking possession of the complainant's house by means of criminal trespass and threats to use force against the complainant and his party, and were in consequence convicted under sections 488 and 143, Indian Penal Code, *held*, that the Court was competent to pass an order under section 522, Criminal Procedure Code, 1898 (as amended in 1923), restoring possession of the house to the complainant.

Mahesh Sahu v. Emperor(1), distinguished.

Where a magistrate, purporting to act under section 522, passes an order more than one month from the date of the conviction, the order is illegal, but the High Court, on an application to revise the order, has power, under clause (2), to restore possession to the person who has been dispossessed.

The facts of the case material to this report are stated in the judgment.

S. Bashiruddin (with him *S. N. Nooruddin*), for the appellant.

JWALA PRASAD, J.—The Magistrate by his order of the 6th November, 1924, directed the Sub-Inspector, Tikari Police, to see that possession of the house, for entering which the petitioners were, in another case⁽²⁾, convicted under section 448, Penal Code, was restored to the complainant. The order is objected to on two

* Criminal Revision no. 715 of 1924, from an order of B. Lal Babu, Honorary Magistrate, Gaya, dated the 8th November, 1924.

(1) (1919) 20 Cr. L. J. 270; 50 Ind. Cas. 80.

(2) Cr. Rev. no. 714 of 1924.

grounds, first, that the mere conviction under section 448 does not justify an order for restoration under section 522 of the Code of Criminal Procedure. The complainant's case under section 448 was that the accused persons in large numbers came armed and forced themselves into the house in spite of the remonstrance made by the complainant. The accused succeeded in taking possession of the house by means of criminal trespass threatening to use force to the complainant and his men. Therefore, their act would clearly come under section 522 which says :

" Whenever a person is convicted of an offence attended by criminal force (or show of force or by criminal intimidation) and it appears to the Court that by such force (or show of force or criminal intimidation) any person has been dispossessed of any immovable property, the Court may, if it thinks fit (when convicting such person or at any time within one month from the date of the conviction) order (the person dispossessed) to be restored to the possession of the same."

The case cited on behalf of the petitioners [*Mahesh Sahu v Emperor*(¹)], does not apply to the present case, and the amendment of section 522 as it then stood by adding the words " show of criminal force " puts an end to the present contention. Section 522, previous to the amendment of 1923, had only the words " by criminal force." By the amendment the words " or show of force or by criminal intimidation " have been added. In the present case the finding of the Magistrate is that the accused were members of an unlawful assembly under section 143, Penal Code, and they have been convicted under that section though no separate sentence has been passed; so the conviction in the present case is not merely under section 448 but under sections 448 and 143. The contention must, therefore, be overruled.

Next it is contended that the order of the Magistrate in the present case passed on the 6th of November, more than six weeks after the conviction of the accused by him on the 23rd September, 1924, is illegal. In this connection also the recent amendment may be usefully looked into. Under the old section the Magistrate was required to pass an order of restoration

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immediately upon the conviction of an accused, and it was held that the order of restoration must have been passed simultaneously. In view of those decisions one month's time is now given to the Magistrate to pass an order of restoration after the conviction of an accused. The order in the present case is, no doubt, more than six weeks after the conviction of the accused. Strictly speaking therefore the order will be beyond the power of the Magistrate. But clause (3) of the section is a new provision added in 1923 whereby an order under the section may be made by any Court of appeal, confirmation, reference or revision.

Thus, the order may be passed by the Courts of appeal, confirmation, reference or revision at any time howsoever long after the conviction by the Magistrate. The matter has come to this Court in revision. This Court is, therefore, competent to pass an order restoring the property to the complainant of which he has been dispossessed by forcible criminal trespass committed by the accused. In the circumstances of the case I exercise my power to pass an order under section 522 of the Code of Criminal Procedure, which virtually is confirmation of the order passed by the Magistrate.

REVISIONAL CIVIL.

Before Jwala Prasad and Kulwant Sahay, J. J.

1924-25.

GAJADHAR PRASAD

Nov., 4, 14;
 Jan., 19.

v.

FIRM MANULAL JAGARNATH PRASAD.*

Adjournment—signature of parties or pleaders to be taken—Ex-parte execution, proceedings, duty of Court in—Transfer of decree, for execution—decree silent as to future interest—interest included in certificate of transferring Court and allowed by executing Court, illegality of—Civil Procedure Code, 1908 (Act V of 1908), sections 38 to 42, Order XXI, rules 3 to 9—Res judicata.

* Civil Revision no. 266 of 1924, from the order of B. Harihar Charan, Subordinate Judge, Motihari, dated the 8th March, 1924.