

record was necessary. Co-widows who hold the estate of their deceased husband jointly are governed by the rule of survivorship. Both of them jointly and severally represent the estate of their deceased husband and if one of them dies the other continues to represent the estate alone. No substitution is necessary.

I agree with my learned brother that this case is clearly governed by the provisions of Order XXII, rule 2. Perhaps it was necessary to file an application that a note be made and the application dated the 11th July, 1931, might have been treated as such an application.

I therefore agree in holding that the appeal did not abate even as against the widow much less it abated as a whole. I agree that the order of the learned District Judge be reversed and that the appeal be heard by him and determined according to law.

*Appeal allowed.*

## REVISIONAL CRIMINAL.

*Before Agarwala and Rowland, JJ.*

FIDA HUSSAIN

v.

SARFARAZ HUSSAIN.\*

*Code of Criminal Procedure, 1898 (Act V of 1898), section 522, clause (3)—time limit, whether imposed by the section—court of appeal, confirmation, reference or revision, whether can pass order after the expiry of one month from the original conviction or the disposal of appellate or revisional proceeding.*

Clause (3) of section 522, Code of Criminal Procedure, 1898, does not impose any time limit within which a court of appeal, confirmation, reference or revision must act.

*Held*, therefore, that it is competent to such a court to pass an order for restoring the property to the complainant even

\* Criminal Revision no. 283 of 1933, from an order of M. Hamid, Esq., Additional District Magistrate, Patna, dated the 1st May, 1933.

1933.

JAINARAIN

OJHA

v.

HIRA

OJHA.

KHAJA

MOHAMED

NOOR.

1933.

July, 7, 11.

1933.

after the expiry of one month from the original conviction or from the disposal of appellate or revisional proceedings.

FIDA  
HUSSAIN  
v.  
SARFARAZ  
HUSSAIN.

*Rameshwar Singh v. King-Emperor*,<sup>(1)</sup> followed.

*Usman Miya v. Amir Miya*<sup>(2)</sup>, not followed.

*Aziz Ahmad v. Buddhu Khan*<sup>(3)</sup>, *Emperor v. Ashiq Hussain Khan*<sup>(4)</sup>, and *Emperor v. Lachman*<sup>(5)</sup>, referred to.

The case was originally heard by Agarwala, J. who referred it to a Division Bench.

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

*M. Yasin Yunus*, for the petitioner.

*Ramnandan Prasad*, for the opposite party.

ROWLAND, J.—This application raises the question of the legality of orders passed under section 522 of the Criminal Procedure Code in the following circumstances.

On the complaint of one Sarfaraz Hussain the petitioner was convicted on 22nd August, 1932, by an Honorary Magistrate exercising 2nd class powers, of offences under sections 504 and 323 of the Indian Penal Code. It was alleged that by means of assault and intimidation petitioner Fida Hussain had dispossessed the complainant of certain immoveable property. The petitioner appealed from his conviction to the District Magistrate who on 6th December, 1932, upheld the conviction. The complainant moved the Honorary Magistrate on 12th December, 1932, to pass an order under section 522 of the Criminal Procedure Code to restore the complainant to possession of the immoveable property. The Honorary Magistrate on this application passed an order on 20th December, 1932, directing possession to be

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

(2) (1927) A. I. R. (Nag.) 131.

(3) (1923) I. L. R. 45 All. 553.

(4) (1922) I. L. R. 45 All. 25.

(5) (1923) I. L. R. 46 All. 92.

delivered accordingly. The petitioner moved the Subdivisional Officer against this order on 21st December, 1932, and the Subdivisional Officer called for the record under section 435 of the Criminal Procedure Code and on 9th January, 1933, referred the case to the District Magistrate under sub-section (2) of that section. On the other hand the petitioner moved the High Court in revision against his conviction and sentence, but his application was rejected on 26th January, 1933. The Additional District Magistrate, who heard the reference made by the Subdivisional Officer, was of opinion that the order of the Honorary Magistrate, dated 20th December, 1932, was without jurisdiction as a period of nearly four months had elapsed between the Honorary Magistrate's judgment of conviction, dated 22nd August, 1932, and the passing of the subsequent order, whereas section 522, clause (1), of the Criminal Procedure Code, as amended in 1923, gives the Court by whom a person is convicted power to pass an order

" when convicting such person or at any time within one month from the date of the conviction ".

He thought, however, on the authority of *Rameshwar Singh v. King-Emperor*(<sup>1</sup>) that he himself had power as a Court of revision under section 522, clause (3), to pass such an order. He considered the case to be " emphatically a fit case for passing such an order ", and he passed an order accordingly. This order was dated 1st May, 1933.

It is contended that the power conferred on a Court of appeal, reference, or revision by section 522, clause (3), is intended to be exercised only at the time of affirming a conviction or at the latest within a month thereafter and reference is made to *Usman Miya v. Amir Miya*(<sup>2</sup>). This was a case in which the accused had been convicted of certain offences and his application in revision had been dismissed. The

1933.

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 FIDA  
 HUSSAIN  
 v.  
 SAREFAZ  
 HUSSAIN.

 ROWLAND,  
 J.

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 (1) (1925) I. L. R. 4 Pat. 488.

(2) (1927) A. I. R. (Nag.) 131.

1933.

FIDA  
HUSSAINv.  
SARFARAZ  
HUSSAIN.ROWLAND,  
J.

findings of fact showed that the complainant had been dispossessed by the accused by criminal force or show of criminal force. After the disposal of the application in revision the complainant moved the High Court for an order under section 522, and the learned Judicial Commissioner observing that it was a fit case for restoring possession to the complainant passed order accordingly and took the trouble to point out that he was disposing of it within the period of one month from the date of confirming the conviction in revision. On the other hand in *Rameshwar Singh v. King-Emperor*(1), which has been relied on by the learned Additional District Magistrate, this High Court was considering a case in which the trial Court had passed an order under section 522 more than six weeks after the conviction of the accused by him. It was observed that strictly speaking the order was beyond the power of the Magistrate. In that case also it seems that a criminal revision had been presented in the High Court against the order of conviction and that criminal revision had been dismissed more than a month before the order under section 522 came under the consideration of the High Court. Jwala Prasad, J. held that clause (3) of the section which was newly added in 1923 did not impose any time limit within which a Court of appeal, confirmation, reference or revision must act. Therefore it was competent to such a Court to pass an order for restoring the property to the complainant even after the expiry of one month from the disposal of appellate or revisional proceedings. These are the only cases placed before us arising out of offences committed after the amendment of the Act in 1923. Before the amendment different views had been taken as to the power of an appellate or revisional Court to pass an order under section 522 which the trial Court had omitted to make. In *Aziz Ahmad v. Buddhu Khan*(2) Daniels, J. thought that a Court of appeal

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

(2) (1923) I. L. R. 45 All. 553.

1933.

FIDA  
HUSSAIN  
v.  
SARFARAZ  
HUSSAIN.  
ROWLAND,  
J.

or revision had no such power. On the other hand though there was some judicial opinion that the Court of first instance must pass an order under section 522 at the time of the conviction or not at all, it was held in *Emperor v. Ashiq Husain Khan*<sup>(1)</sup> that an order under section 522 passed by the trial Court shortly after the confirmation of the conviction in appeal was in order. In *Emperor v. Lachman*<sup>(2)</sup> there had been no order under section 522 passed by the trial Court, but the appellate Court in upholding the conviction and sentence directed restoration of possession. The order of the appellate Court had been passed before the amendments to the Criminal Procedure Code came into force, but it came for consideration before the High Court after those amendments became effective. Sulaiman, J. set aside that portion of the appellate Court's order which directed restoration of possession to the complainant and in place of it made a fresh order directing restoration of possession. I can find nothing in section 522, clause (3), to limit the jurisdiction of an appellate Court to the passing of an order within one month either of the original conviction or of the appellate order. It can hardly have been the intention of the legislature that the appellate Court's order under section 522 must necessarily be passed within a month of the original conviction, for that would make sub-section (3) infructuous in any case in which the pendency of the appeal exceeded one month. As to whether the appellate order under section 522 ought to be within a month of the appellate Court's disposal of the appeal there is no such limitation in the section. It may be that no appeal or application in revision is presented by the accused. Such was indeed the case in *Aziz Ahmad v. Buddhu Khan*<sup>(3)</sup>. And then what is to be the starting point for the time limit? I would respectfully agree with the view

(1) (1922) I. L. R. 45 All. 25.

(2) (1923) I. L. R. 46 All. 92.

(3) (1923) I. L. R. 45 All. 553.

1933.

FIDA  
HUSSAIN  
v.  
SARFARAZ  
HUSSAIN.

ROWLAND,  
J.

of Jwala Prasad, J. in *Rameshwar Singh v. King-Emperor*<sup>(1)</sup> that no time limit was intended to be set. The legislature, it would seem, thought fit to rely on the discretion of appellate and revisional Courts not to exercise their powers under this section in cases where there has been undue or excessive delay in moving the Court for its use.

In the case before us, the complainant's application to be restored to possession was presented to the Honorary Magistrate only six days after the conviction had been affirmed on appeal, and there can be no question of withholding relief on the ground of excessive delay. The proper course, however, for the complainant was to move the appellate Court, and the proper course for the Honorary Magistrate was to reject or return the application directing complainant to move the appellate Court if so advised. The Additional District Magistrate had, I think, power to deal with the matter, and has done so correctly.

In the result, the application should, in my opinion, be dismissed.

AGARWALA, J.—I agree.

*Rule discharged.*

## LETTERS PATENT.

*Before Wort, A. C. J. and Kulwant Sahay, J.*

1933.

July, 19.

MAHARAJA KUMAR GOPAL SARAN NARAIN SINGH  
v.

CHHAKAURI LALL.\*

*Limitation Act, 1908 (Act IX of 1908), Schedule 1, Articles 115 and 120—compromise merged in decree, whether is "contract" within the meaning of Article 115—suit for compensation based on such compromise—proper article applicable.*

\* Letters Patent Appeals no. 111 and 112 of 1932, from a decision of the Hon'ble Mr. Justice Agarwala, dated the 14th December, 1932.

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