

The application is therefore dismissed. I leave the parties to bear their own costs.

BHIDE J.

BHIDE J.—I concur.

N. F. E.

Application dismissed.

REVISIONAL CRIMINAL.

Before Mr. Justice Broadway.

TEJA SINGH—Petitioner

versus

THE CROWN—Respondent.

Criminal Revision No. 884 of 1927.

*Criminal Procedure Code, Act V of 1898, section 522—
Order for restoration of immovable property—can be made
only where criminal force has been used.*

Held, that in the absence of a finding that the accused has used *criminal force*, etc., in dispossessing the complainant of his property, no order for restoration can be passed under section 522 of the Criminal Procedure Code.

Ishan Chandra v. Dina Nath (1), Hari Chand v. Crown (2), Batakala Pottiaradu (3), and Churaman v. Ram Lal (4), referred to.

Application for revision of the order of J. W. Hearn, Esquire, District Magistrate, Sialkot, dated the 23rd March 1927, modifying that of Sardar Katha Singh, Magistrate, 2nd class, Daska, district Sialkot, dated the 10th February 1927, convicting the petitioner.

M. L. PURI, for Petitioner.

Nemo, for Respondent.

(1) (1900) I. L. R. 27 Cal. 174.
(2) 16 P. R. (Cr.) 1919.

(3) (1903) I. L. R. 26 Mad. 49.
(4) (1903) I. L. R. 25 All. 341.

JUDGMENT.

BROADWAY J.—Teja Singh, son of Jagat Singh, obstructed a certain lane by building a wall across it. Proceedings were taken against him under section 283 of the Indian Penal Code and he was convicted under that section and sentenced to pay a fine of Rs. 50. He appealed to the District Magistrate who came to a clear finding that the lane which had been obstructed had been dedicated to the public and was a public thoroughfare and that therefore the obstruction of that lane by the building of the wall was an offence falling within the purview of section 283 of the Indian Penal Code.

It was further held, however, that Teja Singh had acted in a *bonâ fide* belief that he had the right to close the lane by building this wall and the learned District Magistrate, therefore, reduced the punishment to a fine of Re. one, or in default to one day's simple imprisonment. He then proceeded to make an order under section 522 of the Criminal Procedure Code, directing Teja Singh to demolish the wall within one month from the date of the judgment.

Teja Singh moved this Court under section 439 of the Criminal Procedure Code and the learned Judge in Chambers before whom this petition first came up for hearing while upholding the conviction and sentence under section 283 of the Indian Penal Code, issued notice in connection with the order passed under section 522 of the Criminal Procedure Code.

It has been contended before me by Mr. Mukand Lal Puri that in the absence of any finding that any criminal force had been used by Teja Singh, the order under section 522 of the Criminal Procedure Code was without jurisdiction and bad in law. He has placed

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reliance principally on *Ishan Chandra v. Dina Nath* (1), *Hari Chand v. Crown* (2), *Batakala Pottiaradu* (3) and *Churaman v. Ram Lal* (4). A reference to section 522 appears to me to support the contention advanced by the learned counsel. There is no finding by the District Magistrate that any force was used by Teja Singh and therefore it seems to me that the order passed under section 522 of the Criminal Procedure Code was without jurisdiction. I, therefore, set it aside.

N. F. E.

Appeal accepted.

APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Agha Haider.

HIRA SINGH (PLAINTIFF) Appellant

versus

Mst. MANGLAN AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 2771 of 1923.

Hindu Law—Mitakshara—joint family—separation of one co-parcener—effect of—presumption of complete separation—Re-union of remaining co-parceners—Second Appeal—High Court not bound by finding of fact based upon erroneous view of the law.

One A. died leaving a widow X. and three sons B. C. and D. who constituted a joint family governed by the law of the *Mitakshara*. A document described as a *farighkhuti* was subsequently executed whereby D. was shewn to have separated from the joint family with his one-fourth share in the family property and in which the shares of B. C. and X. in the remaining three-fourths share in the property were indicated; and gave them liberty to keep the *corpus* of the property either whole or in separate shares.

(1) (1900) I. L. R. 27 Cal. 174.

(2) 16 P. R. (Cr.) 1919.

(3) (1903) I. L. R. 26 Mad. 49.

(4) (1903) I. L. R. 25 All. 341.