

REVISIONAL CRIMINAL.

Before Jai Lal J.

1934
Feb. 2.

BIHARI LAL AND ANOTHER (ACCUSED) Petitioners

versus

THE CROWN—Respondent.

Criminal Revision No. 1627 of 1933.

Criminal Procedure Code, Act V of 1898, Section 522—whether applicable—when possession has been taken without force or show of force—'Force' defined—Indian Penal Code, Act XLV of 1860, Sections 349, 350.

One *H. S.* gave his house to certain trustees for use of his brotherhood. On his death the petitioner *B. L.* who claimed to be his adopted son, in the absence of the trustees, broke the lock and took possession of the house and refused to return it to the trustees. *B. L.* and his servant (petitioner No. 2) were convicted by the Magistrate under section 454, Indian Penal Code, and were ordered to restore the house to the complainant. On appeal the Sessions Judge changed the conviction to one under section 453 and made a reference to the High Court recommending that the order for restoration be set aside.

Held, that an order for restoration of possession of immoveable property under section 522, Criminal Procedure Code, can be made only when dispossession has been by 'force or show of force or criminal intimidation' and 'force' (as defined in section 349, Indian Penal Code) contemplates the presence of the person to whom it is used as well as of the person using the force.

Mangi Ram v. Emperor (1), relied upon.

Allah Jowaya v. Emperor (2), distinguished.

Petition for revision of the order of Mr. R. B. Beckett, Sessions Judge, Delhi, dated 23rd August, 1933, modifying that of R. B. Lala Sant Ram, Hono-

(1) 1927 A. I. R. (Lah.) 830.

(2) (1926) 93 I. C. 598.

rary Magistrate, 1st Class, Delhi, dated 1st August, 1933, convicting the petitioners.

MOHAMMAD ALAM, for Petitioners.

Nemo, for Respondent.

JAI LAL J.—This judgment will dispose of Criminal Revision No. 1627 of 1933 and references Nos. 1464 of 1933 and 1472 of 1933. All these cases relate to the same incident. Behari Lal and Lekha were convicted by a Magistrate under section 454 of the Indian Penal Code for having committed house-breaking with the intentions mentioned in that section. On appeal, the learned Sessions Judge altered the conviction to one under section 453, Indian Penal Code. The Magistrate had also passed an order under section 522 of the Criminal Procedure Code for the restoration of the house in respect of which the house-breaking had been committed by the convicts, but the Sessions Judge, being of opinion that this order could not have been passed on a conviction under section 453, Indian Penal Code, has reported the case to this Court recommending that the order as to restoration be set aside. The convicts on the other hand have filed a petition for the revision of their convictions. I have heard counsel on both sides.

The brief facts are that the house in dispute belonged to one Hazari Singh, who has been found to have given it away to certain trustees for use by his brotherhood. It has also been found that during his lifetime he vacated the house and began to live elsewhere and it was used by the trustees for the purposes for which it was entrusted to them. Hazari Singh has now died and the convict Behari Lal claims to be

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his adopted son. The other convict Lekha is his servant. After the death of Hazari Singh, it has been found by the Sessions Judge that, the house used to be locked up by the trustees, and the key remained in the custody of one Mithan Lal. Ram Sarup, the complainant, acted as his representative. Whenever the house was required for the meetings of the brotherhood the lock used to be removed by Mithan Lal, and after the meeting put on again by him. Apparently Bihari Lal claimed the right to the custody of the house as a trustee and disputed the right of the other alleged trustees to the possession of the house. It has been found that he, along with Lekha, went to the house in the absence of the trustees or their representatives, and broke the lock and thus entered the house. It has been found that on one occasion the trustees went to the house and found it chained from inside and apparently occupied by Behari Lal who opened the house at their request and there was a discussion with Behari Lal relating to the return of the house but the latter refused to do so. On these facts the learned Sessions Judge has found that an offence under section 453, Indian Penal Code, has been committed by Behari Lal.

It is contended on behalf of Behari Lal that the evidence is not sufficient to prove that he committed house-breaking, as alleged by the complainant, but there is evidence on this point which has been believed by the Sessions Judge and I decline to interfere with this finding of fact.

Another point taken on behalf of the convicts is that the dispute is of a civil nature as the convicts took possession of the house in exercise of a *bond fide*

claim to it. I am unable to agree to this contention either. The facts stated above clearly militate against the plea of *bonâ fides*. I, therefore, decline to interfere with the conviction of the petitioners.

Now, with regard to the reference made by the learned Sessions Judge that, having regard to the facts found in this case, an order for the restoration of the house could not be passed, it appears that a learned Judge of this Court held in *Mangi Ram v. Emperor* (1), in almost similar circumstances, that section 522, Criminal Procedure Code, did not apply. The learned Judge was of opinion that the convict in that case could not be held guilty of criminal force as defined in section 350 of the Indian Penal Code. It is true that section 522, Criminal Procedure Code, has been amended so as to provide that an order under that section can be passed if the offence is attended by show of force or by criminal intimidation. Still, in my opinion, it does not apply to the facts of this case. "Force" as defined in section 349 of the Indian Penal Code contemplates the presence of the person to whom it is used, that is to say it contemplates the presence of the person using the force and of the person to whom the force is used. Therefore, even with the addition of the words "show of force or criminal intimidation under section 522, Criminal Procedure Code" *Mangi Ram v. Emperor* (1) does not cease to apply to this case. *Allah Jawaya and others v. Emperor* (2), cited by the respondent's counsel does not help him. In that case it was found that the accused were still putting a fence round the land when the complainant arrived and the former

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(1) 1927 A. I. R. (Lah.) 830.

(2) (1926) 93 I. C. 895.

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prevented the latter from taking possession by show of force and an order restoring possession was, therefore, held justifiable. It would thus be observed that in that case the two contending parties came face to face and there was consequently a show of force by the accused. In the present case it is the complainant's version that the lock was broken in his absence. It is, therefore, clear that possession was taken by the convicts without any "force or show of force."

Under the circumstances I am of opinion that the view of the learned Sessions Judge is correct that section 522 has no application to the facts of the present case and consequently that no order for the restoration of the house to the complainant could be passed.

I accept the references and set aside the order relating to the restoration of the house passed by the Magistrate in favour of the complainant. The petition on behalf of the petitioners is also dismissed.

A. N. C.

Revision accepted.
