

failure of justice to deprive an accused of his legal rights, *i.e.*, of defending himself effectively.

The case under these circumstances must be sent back for re-trial. We order accordingly. The case will go to the Sessions Judge, Sargodha, who will not be the same Sessions Judge who originally tried the case in the first instance.

The application for revision in this case obviously fails and is dismissed.

A. N. K.

REVISIONAL CRIMINAL.

Before Din Mohammad J.

RAM CHAND AND ANOTHER—Petitioners,

versus

THE CROWN—Respondent.

Criminal Revision No. 1324 of 1938.

Criminal Procedure Code (Act V of 1898), S. 522 — Indian Penal Code (Act XLV of 1860), SS. 349, 350 — Criminal force within the meaning of S. 522 of the Code of Criminal Procedure — Criminal force whether can be used to a thing.

Held, that the term “force” is defined in S. 349 of the Indian Penal Code and the term “criminal force” is defined in S. 350 of the Indian Penal Code and both contemplate the use of force to a person and not to a thing.

Section 522 of the Code of Criminal Procedure comes into play only when the offence is attended by criminal force, show of force or by criminal intimidation and not otherwise.

When, therefore, the complainant himself alleges that the house was locked when the unlawful entry was effected, it cannot be argued that the offence of criminal trespass was attended by criminal force or show of force or by criminal intimidation within the meaning of S. 522 of the Code of Criminal Procedure.

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Roda v. Autar Singh (1), dissented from.

Other case-law referred to.

Revision from the order of R. B. Lala Izzat Rai, Additional District Magistrate, Rawalpindi, dated 29th August, affirming that of Captain R. D. Metcalfe, Magistrate, 2nd Class, Rawalpindi, dated 5th August, 1938, convicting the petitioners.

DINA NATH BHASIN, for Petitioners.

Nemo, for (Crown), for Respondent.

HARNAM SINGH, for FAQIR CHAND.

DIN
MOHAMMAD J

DIN MOHAMMAD J.—The petitioners, Ram Chand and Prem Singh, were convicted under section 448, Indian Penal Code, and released on probation of good conduct under section 562, Criminal Procedure Code. Later, under section 522, Criminal Procedure Code, the complainant was ordered to be restored to the possession of the property alleged to have been trespassed upon by the petitioners.

Counsel for the petitioners has urged that there was a *bonâ fide* dispute between the complainant and the petitioner Ram Chand, who is a brother of the complainant, and that consequently his act did not fall within the purview of section 448, Indian Penal Code. I am, however, not inclined to agree with him. There is abundant evidence on the record to show that long before the petitioners effected an unlawful entry into the complainant's house, all disputes had been settled and the complainant had been exclusively allotted the house in dispute. It is also established that the trespass was committed in order to gain support for the declaratory suit that had been instituted by the petitioners against the complainant. The entry, therefore, could under no circumstances be characterised as

having been made in good faith and the act of the petitioners thus clearly fell within the definition of section 442 read with section 441, Indian Penal Code. I accordingly dismiss the petition so far as it relates to the petitioners' conviction.

The order made by the Magistrate under section 522, Criminal Procedure Code, however, is obviously illegal. Counsel for the complainant has relied on a recent judgment of this Court reported as *Roda v. Autar Singh* (1), which no doubt supports the contention raised by him, but with all respect I am of opinion that that judgment does not lay down good law. Section 522, Criminal Procedure Code, comes into play only when the offence is attended by criminal force or show of force or by criminal intimidation and when any person is dispossessed of any immovable property by such force or show of force or criminal intimidation and not otherwise. In a case where the complainant himself alleges that the house was locked when the unlawful entry was effected it can by no stretch of language be argued that the offence of criminal trespass was attended by criminal force or show of force or by criminal intimidation. The term "force" is defined in section 349, Indian Penal Code, and the term "criminal force" is defined in section 350, Indian Penal Code, and both sections contemplate the use of force to a person and not to a thing. In *Roda v. Autar Singh* (1) Skemp J. has no doubt remarked that when a person breaks a lock, he uses criminal force to it. But, as stated above, I am disposed to think that this is not so, especially when it is seen that section 522, Criminal Procedure Code, contemplates not only criminal force but criminal intimidation, too, and it is

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inconceivable how a person can criminally intimidate an inanimate object. There is a long array of authorities which lend support to the view I am inclined to take and I would err in good company, even if I be wrong. Reference in this connection may be made to *Hari Chand v. The Crown* (1), *Teja Singh v. Emperor* (2) and *Mangiram v. Emperor* (3), *Behari Lal v. Emperor* (4) and *Suba v. Ali Gauhar* (5). To the same effect are the two judgments reported in *Bisweswar Singh v. Bhola Nath* (6) and *Sadasib Mandal v. Emperor* (7) both of which were given by a Division Bench of the Calcutta High Court composed of Imam and Chapman JJ.

I accordingly set aside the order made by the Magistrate under section 522, Criminal Procedure Code, and direct the parties to be restored to their original position leaving the complainant to take such action afterwards as he is advised to take under the law.

A. K. C.

(1) 16 P. R. (Cr.) 1919.

(4) I. L. R. (1934) 15 Lah. 786.

(2) 1927 A. I. R. (Lah.) 792.

(5) 1935 A. I. R. (Lah.) 477.

(3) 1927 A. I. R. (Lah.) 830.

(6) (1914) 15 Cr. L. J. 175.

(7) (1914) 15 Cr. L. J. 720.