

## CRIMINAL REVISION.

*Before Mr. Justice Stevens and Mr. Justice Harington.*

1902  
March 12.

GOURHARI GOPE

v.

ALAY GOPINI.\*

*Immoveable property—Possession—Order by Subordinate Magistrate restoring—Appeal—Jurisdiction—Magistrate of first class specially empowered to hear appeals—Consequential or incidental order—Criminal Procedure Code (Act V of 1898) ss. 423, cl. (d) and 522 and (Act X of 1882) s. 423.*

*Held*, that under s. 423, cl. (d) of the Criminal Procedure Code of 1898, a Magistrate of the first class specially empowered to hear appeals from Subordinate Magistrates has jurisdiction to hear an appeal with reference to an order passed by a Subordinate Magistrate under s. 522 of that Code.

*Ram Chandra Mistry v. Nobin Mirdha* (1) declared obsolete.

IN this case the complainant alleged that the petitioner Gourhari Gope and others pulled down her house and erected a tin shed on the *bhiti* and forcibly took away her household articles.

The petitioner alleged that the house and the *bhiti* underneath belonged to him, and that the nature of the possession by the complainant was a permissive one under him.

The petitioner was tried by a Bench of Honorary Magistrates, and was convicted under s. 426 of the Penal Code of mischief, and the Magistrates under s. 522 of the Criminal Procedure Code ordered possession of the *bhiti* to be restored to the complainant.

The petitioner appealed to the Deputy Magistrate of Dacca with first class powers, who was specially empowered to hear appeals from Subordinate Magistrates, and who, relying on the ruling in the case of *Ram Chandra Mistry v. Nobin Mirdha* (1), was of opinion that he had no power on appeal to interfere with the order under s. 522 of the Criminal Procedure Code.

\* Criminal Motion No. 1117 of 1901, made against the order passed by Akhoy Kumar Sen, Deputy Magistrate of Dacca, dated the 3rd of September 1901.

(1) (1898) I. L. R. 25 Calc. 630.

The petitioner then moved the High Court in revision and obtained a Rule.

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*Babu Shurat Chunder Baisak* and *Babu Satish Chunder Mukerjee* for the petitioner.

No one appeared for the opposite party.

**STEVENS AND HARRINGTON JJ.** This Rule was granted to show cause why a Magistrate of the first class specially empowered to hear appeals from Subordinate Magistrates should not be directed to hear this appeal with reference to the order passed by the Subordinate Magistrate under s. 522 of the Code of Criminal Procedure.

The Magistrate exercising appellate powers was of opinion that he had no power to interfere with an order under s. 522 under the ruling of this Court in the case of *Ram Chandra Mistry v. Nobin Mirdha* (1). That ruling is, however, obsolete, having reference to Act X of 1882, the Code of Criminal Procedure then in force. Clause (d) of s. 423 of the present Code of Criminal Procedure provides for the making by an Appellate Court of any consequential or incidental order that may be just or proper.

The Rule is made absolute.

The case will go back to the Appellate Court to be dealt with as regards the order under s. 522 of the Code of Criminal Procedure.

D. S.

*Rule made absolute.*