

CRIMINAL REVISION.

Before Mr. Justice Brett and Mr. Justice Ryves.

1908
July, 31.

AHMED ALI

v.

KEENOO KHAN.*

Revision—High Court, revisional jurisdiction over immoveable property—Power to interfere with orders directing restoration of possession of immoveable property—Duty of Magistrate to pass orders under ss. 517 and 522 in favour of a party forcibly dispossessed—Criminal Procedure Code (Act V of 1898), ss. 423 (1) (d), 439, 517 and 522.

Under section 423 (1) (d) of the Criminal Procedure Code the High Court has power, as a Court of Revision, to interfere with an order passed by a Magistrate under section 522 of the Code.

Manli v. Bhagwanti (1), followed. *Ram Chandra Mistry v. Nobin Miraha* (2), referred to.

Where a party was found to have been assaulted and dispossessed of a bungalow and its contents by the opposite party, who was, in consequence, convicted under section 323 of the Penal Code :—

Held, that it was the duty of the Magistrate to have passed orders under sections 522 and 517 directing restoration of the bungalow and its contents to the party thus forcibly dispossessed.

CRIMINAL RULE.

The petitioner was a 5 annas co-sharer of mouzah Gurial, their interest in which the other co-sharers had sold or leased to one Reazut Hossein and others, the masters of the present accused. It was alleged that in August 1907, Reazut Hossein wanted the petitioner to lease his share also to him, but the former refused. On the 9th September following the accused, Keenoo Khan and others, went to the petitioner's village and entered his tiled bungalow, beat him and forcibly ousted him therefrom.

The accused were put on their trial before Babu D. L. Roy, a Deputy Magistrate of Gya, who examined the prosecution witnesses and framed a charge under section 147 of the Penal

* Criminal Revision No. 804 of 1908, against the orders of Nagendro Nath Gupta, Deputy Magistrate of Gya, dated 4th May and 6th June 1908.

(1) (1904) I. L. R. 27 All. 415. (2) (1898) I. L. R. 25 Calc. 630.

Code. He was then transferred and the case was continued before Babu Nagendra Nath Gupta who, on the 16th April 1908, convicted three of the accused under section 323 of the Penal Code. He found that the complainant was in possession of the tiled bungalow at the time of the offence and had been ejected by the accused.

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On the same date the accused Keenoo applied to the Magistrate for restoration of the articles found in the bungalow as well as possession of the latter.

On the 4th May the Magistrate passed the following order :—

I find that no decision was arrived at as to whom the moveable property within the tiled bungalow found by the police belonged. As regards the tiled bungalow, I found that the complainant was dispossessed from the tiled bungalow. Some of the accused were convicted under section 323 of the Penal Code. It was not decided that force was used to drive out the complainant from the bungalow. The force might have been used either to check the high-handedness of the complainant for not allowing other tenants to transplant their fields, or to dispossess the complainant from the bungalow. Unless there is a specific charge that force was used to drive the complainant from the bungalow, I have no power to order the complainant to be put in possession of the property. I order the property to be returned to the party, in whose possession they were found."

On the 6th June the accused again applied to the Magistrate for delivery of possession of the bungalow, and he passed an order in the following terms :—

The bungalow may be made over to the person, in whose possession it was found by the police. As the accused Keenoo Khan was in possession of it, it is to be made over to him.

The petitioner then moved the High Court against the two orders and obtained the present Rule.

Mr. Mahmudul Huq (*Mr. Sultan Ahmed* and *Mahomed Mustaja Khan* with him) showed cause. Under section 520 of the Code a Court of appeal or revision may interfere with orders passed by a Magistrate under section 517, 518 or 519, but no such power is given with reference to orders under section 522. Section 423 (1) (d) only applies, when the main case has been revised and a consequential or incidental order becomes necessary. Here the main order is that of the Magis-

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trate sentencing the accused, but the Rule is with respect only to the order under section 522.

Mr. Remfry (with him *Babu Atulya Charan Bose*), for the petitioner. There is nothing in the argument of the opposite side.

[BRETT, J :—Have we not an inherent jurisdiction? See *Ram Chandra Mistry v. Nobin Mirdha* (1). RYVES, J :—See *Manki v. Bhagwanti* (2)] These cases are in my favour.

BRETT AND RYVES JJ. After hearing the learned Counsel on both sides we are of opinion, that the Rule must be made absolute and the orders passed by the Deputy Magistrate, on the 4th May and 6th June 1908, directing delivery of the bungalow and its contents to the opposite party, must be set aside and in lieu thereof an order passed that the bungalow and its contents be made over to the petitioner.

It is clear from the facts stated in the petition that the petitioner's case, in which he charged the opposite party with having forcibly dispossessed him of the bungalow and its contents, was found to be true, and the opposite party was convicted under section 323 of the Indian Penal Code of having forcibly dispossessed him of both. In those circumstances it was the duty of the Magistrate to pass orders under sections 522 and 517 of the Criminal Procedure Code directing restoration to the petitioner of the bungalow and its contents, from which it was found he had been forcibly dispossessed.

It has, however, been contended on behalf of the opposite party that this Court has no power to interfere in revision with an order passed by a Magistrate under section 522 of the Code of Criminal Procedure. It is admitted that such a power is expressly given with reference to an order under section 517, but it is argued that such a power is not expressly given with reference to an order passed under section 522 of the Criminal Procedure Code, and this Court cannot interfere with an order under the latter section. We find, however, that this question was before the Allahabad High Court in the case of *Manki v. Bhagwanti* (2), and the learned Judges distinctly held that

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

(2) (1904) I. L. R. 27 All. 415.

under the provisions of clause (d) of section 423 of the Criminal Procedure Code, this Court, as a Court of Revision, has full power to interfere with an order under section 522 of the Criminal Procedure Code. The learned Judges in that case referred to the case in this Court of *Ram Chandra Mistry v. Nobin Mirdha* (1), as apparently laying down a different view. The question was not, however, before this Court in that case, and the remarks made by the learned Judges of this Court in their judgment, in which they deal with the argument advanced on the basis of the principles laid down by the Privy Council in *Rodger v. Comptoir D'Escompte de Paris* (2) that it is the duty of all Courts to take care that the act of the Court does no injury to any of the suitors, seem to indicate that, if a fit case for their interference had been made out, they would not have hesitated to enforce the principle. We agree with the view taken by the Judges of the Allahabad High Court, and hold that the objection taken cannot be sustained, and that this Court has power to interfere in revision with an order passed by a Magistrate under section 522 of the Criminal Procedure Code.

We, therefore, make the Rule absolute, set aside the orders of the Deputy Magistrate, dated the 4th May and 6th June, and in lieu thereof direct that the bungalow and its contents be made over to the petitioner.

Rule absolute.

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

(2) (1871) L. R. 3 P. C. 465, 475.