

1911  
 JAIWANTI  
 KUMRI  
 v.  
 GAJADHAR  
 UPADHYA.

The grandmother, Musummat Champabati Kumri, has made very definite allegations against her daughter-in-law in her petition of objection. Those should be enquired into by the District Judge, recording the evidence on both sides.

With these remarks we set aside the order of the learned District Judge and send down the case for him to deal with the application of Musummat Jaiwanti Kumri on the merits.

Each party will bear his or her own costs of this appeal.

We direct that the record be sent down at once.

S. A. A. A.

*Appeal allowed;  
 case remanded.*

## CRIMINAL REVISION.

*Before Mr. Justice Caspersz and Mr. Justice Sharfuddin.*

KANGALI SARDAR

v.

BAMA CHARAN BHATTACHARJEE.\*

1911  
 June 15.

*Jurisdiction of High Court—Power to revise an order of acquittal at the instance of a private party—Decision on a point of local jurisdiction and not on the merits—Criminal Procedure Code (Act V of 1898) ss. 423, 439 (5)—Practice.*

Section 439 (5) of the Criminal Procedure Code does not bar the jurisdiction of the High Court to interfere with an order of acquittal on an application made at the instance of a private party.

Where the Appellate Court set aside a conviction and sentence on the ground that the place of occurrence was outside the local limits of the trying Magistrate's jurisdiction, overlooking the provisions of s. 531 of the Code, the High Court set aside the order of acquittal and directed a re-hearing of the appeal.

What the Appellate Court has to find is whether the offence, of which an accused is convicted, has been made out not with reference to any dispute as to jurisdiction, but on the merits and in accordance with the evidence.

On the 21st August, 1910, the petitioner lodged a complaint, under sections 143 and 379 of the Penal Code, against

\* Criminal Revision, No. 486 of 1911, against the order of W. B. Heycock, District Magistrate of Burdwan, dated Feb. 16, 1911.

Bama Charan Bhattacharjee, and Hiru Sheikh, before the Sub-Divisional Officer of Khulna, which was made over by him to Babu Prokash Chunder Dutt, a local Sub-Deputy Magistrate, for trial. The story for the prosecution was that Hiru with about 20 or 25 others cut and removed paddy from the complainant's land in Kastosali *chur* under the orders of Bama Charan, Hem Banerjee and Sasi Bharati, and that the complainant remonstrated with them whereupon some of them went to beat him and he ran away. The trying Magistrate convicted the two accused, on the 23rd November, 1910, and sentenced Bama Charan to a fine of Rs. 50, in default to one month's rigorous imprisonment, and Hiru to rigorous imprisonment for 45 days. They appealed to the District Magistrate of Burdwan who, by his order dated the 16th February, 1911, set aside the conviction and acquitted the appellants. The order was in the following terms:—

"This case cannot stand for two reasons. The place of occurrence is alleged to be Kastosali *chur*. Kastosali *chur* lies within the criminal jurisdiction of the district of Nadia. Secondly, Kastosali *chur* is in the *khas* possession of Government, and a raiyatwari settlement has been made of the lands. The story of the prosecution witnesses must be false, if the place of occurrence and the land in dispute is actually in *chur* Kastosali.

I sent back the case to the S. D. O. with reference to these points. The S. D. O. examined a witness to show that village Kastosali not *chur* Kastosali was meant. I cannot accept this explanation in view of the statements of the witnesses. *Mouza* Kastosali is, it is true, in the criminal jurisdiction of this land. All the witnesses, however, say that the land in dispute is in *chur* Kastosali, a very different thing."

The petitioner thereupon moved the High Court and obtained the present Rule.

*Babu Atulya Charan Bose*, for the petitioner.

*Mr. K. N. Chaudhuri*, *Babu Hemendra Nath Sen* and *Babu D. N. Bagchi*, for the opposite party.

CASPERSZ AND SHARFUDDIN JJ. This Rule is directed against an order of acquittal by the District Magistrate of Burdwan sitting as an Appellate Court.

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A preliminary objection has been raised by the learned counsel showing cause that we ought not to interfere in revision with such an order, and he has cited the provisions of sub-section (5) of section 439 of the Criminal Procedure Code. That sub-section runs as follows:—“Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.” The contention is that, as Government alone could have appealed against the order of the District Magistrate, we ought not to interfere in revision. But this argument overlooks the words “at the instance of the party who could have appealed.” We are not here dealing with an application for revision at the instance of Government. The petitioner is the complainant, and we entertain no doubt that we can deal with an order of this kind in accordance with the practice of this Court in a series of cases.

The order we propose to pass is one which is usually passed, that is to say, the District Magistrate must re-hear the appeal. He overlooked the provisions of section 531 of the Code, and based his judgment on the fact ascertained by local enquiry, not by the trying Magistrate but by the Sub-Divisional Officer, that the scene of occurrence was *chur* Kastosali, which is within the criminal jurisdiction of the neighbouring district of Nadia. The District Magistrate says: “The story of the prosecution witnesses must be false if the place of occurrence and the land in dispute is actually in *chur* Kastosali.” We do not follow that reasoning. What the District Magistrate had to find, in a case under sections 143 and 379 of the Indian Penal Code, was whether those offences had been made out, not with reference to any dispute as to jurisdiction but on the merits and in accordance with the evidence. The District Magistrate has not properly considered the case.

We must, therefore, make the Rule absolute, set aside the order acquitting the accused persons, and direct the District Magistrate to re-hear the appeal.

E. H. M.

*Rule absolute.*