

cluded in that term, though it may have the effect of bringing within the operation of section 3 of the Encumbered Estates Act any Revenue Courts in Bengal which are not also Civil Courts.

1910
 PRATAP
 UDAINATH
 SHAH
 DEO
 v.
 MADAN
 MOHAN
 NATH
 SABL.

In regard to the provisions of section 7 of the Encumbered Estates Act, it is clear that an execution barred by section 3 is revived by section 12, and it is therefore unnecessary for the purpose of the present case, to consider the precise effect of the exclusion of "rent due to the superior landlord" from the bar imposed by section 7: *Kameshar Prasad v. Bhikhan Narain Singh* (1).

S. M.

Appeal allowed.

(1) (1893) L. L. R. 20 Calc. 609.

CRIMINAL REVISION.

Before Mr. Justice Holmeood and Mr. Justice Doss.

LAL MOHAN MANDAL

v.

KALI KISHORE BHUIMALI.*

1910
 Sept. 30.

Appellate Court—Power to alter conviction under s. 147, Penal Code, to one under s. 323, when the common object charged was other than to cause hurt—Issue of Rule and order for bail by the High Court—Duty of the Magistrate on receiving intimation of the same by telegram from Counsel—Delay in transmitting the Bail orders—Criminal Procedure Code (Act V of 1898), s. 423.

The Appellate Court cannot alter a conviction of rioting under s. 147 of the Penal Code, with the common object of ejecting the complainants from their homestead lands, to one under s. 323 thereof.

When a Rule is issued by the High Court and the proceedings stayed, and, *à fortiori*, when an order for bail is made, the Magistrate, on receiving reliable information thereof, such as a telegram from the counsel in the case, is bound to act on it immediately, though he has not received the High Court's orders at the time.

Ratnessari Pershad v. Empress (1) followed.

All bail orders must be issued from the office of the High Court on the same day they are passed, irrespective of the written order on the record.

* Criminal Revision, No. 1172 of 1910, against the order of G. C. Chatterjee, Additional District Magistrate of Dacca, dated Aug. 12, 1910.

(1) (1898) 2 C. W. N. 498.

1910
 LAL
 MOHAN
 MANDAL
 v.
 KALI
 KISHORE
 BHUIMALI.

ON the 3rd May 1910 a quarrel arose between the complainants, Kali Kishore Bhumali and Ram Kamal Bhumali, and the petitioners and others, out of a dispute relating to the possession of certain homestead lands which led to a mutual fight in the course of which both parties received injuries. The petitioners were placed on trial before a Bench of Magistrates at Munshigunge, in the district of Dacca, charged, under s. 147 of the Penal Code, with rioting, with the common object of ejecting the complainants from their homestead lands, and were convicted and sentenced thereunder, on the 21st July, to six and three months' rigorous imprisonment, respectively. The Bench found that the petitioner, Lal Mohan Mandal, struck the complainants with a *lathi*, and that the petitioner, Chandra Mohan Mandal, though unarmed, was present co-operating with the other assailants. On appeal the Additional District Magistrate of Dacca doubted whether the petitioners' party consisted of five or more persons, but he was of opinion that both the petitioners beat the complainants, and accordingly altered the conviction to one under s. 323 of the Penal Code, and reduced the sentences to 15 days by his order dated the 12th August.

The petitioners surrendered on the 30th August, and moved the High Court and obtained a Rule, on the 5th September, with an order of *interim* bail. On the same day their Counsel wired to the Sub-Divisional Officer, informing him of the issue of the Rule and the bail order; but the petitioners were not released owing to the High Court's orders not having reached the District Magistrate till after the sentences had been served out.

Mr. B. M. Chatterjee and *Babu Bhupendra Chunder Guha*, for the petitioners.

Babu Manmatha Nath Mukerji, for the opposite party.

HOLMWOOD AND DOSS JJ. This is a Rule calling upon the District Magistrate of Dacca to show cause why the convictions of, and sentences passed upon, the petitioners, under section 323 of the Indian Penal Code, should not be set aside on the

ground that there was no charge against them under that section, and that the common object charged for the riot did not specify the intention to cause hurt.

It is admitted that the conviction cannot stand on the ground set out in the Rule; but we are asked to order a re-trial. No doubt, it would have been our duty to order a re-trial, had it not been for the fact that the petitioners have undergone the sentence of 15 days' rigorous imprisonment, which was passed against them in modification by the lower Appellate Court. It appears, however, that at the time we issued the order for bail, on the 5th September 1910, the petitioners had only actually served seven days; and we cannot understand how it was that our order did not reach the District Magistrate for eight days. But, beyond this, we understand that the learned counsel who obtained the Rule took the trouble to telegraph to the District Magistrate's Office, informing him of the result of the application; and it has been laid down by this Court in more than one case, of which we need only cite that of *Ratnessari Pershad v. Empress* (1), that when a Rule is issued by the High Court and the proceedings stayed, and therefore, *à fortiori*, when there is an order for bail, the Magistrates on receiving reliable information thereof should stay their hands then and there.

Another matter in connection with this case is the delay which took place in the office of this Court. We had reason to complain of a similar delay during the course of the present week, and we must lay down most stringently that all bail orders be issued on the very day on which they are pronounced by the Judges sitting on the Bench, irrespective of the written order on the record. The Rule is made absolute, and the convictions and sentences are set aside.

E. H. M.

Rule absolute.

1910
 LAL
 MOHAN
 MANDAL
 v.
 KALI
 KISHORE
 BHUMALI.

(1) (1898) 2 C. W. N. 498.