

1912  
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 BASANTI  
 LAL  
 v.  
 CHHEDO  
 SINGH.  
 ———  
 JENKINS  
 C.J.

Judge has determined that the sum of Rs. 500 deposited by the surety is forfeited to the Government. The Secretary of State has been represented before us, and the learned pleader tells us—I think most properly—that he leaves the matter in the hands of the Court. It is to my mind obvious that there was no power in the Court to declare a forfeiture in favour of the Government. The surety was anxious to suggest that his suretyship did not extend beyond the pendency of the insolvency proceedings. But he has not appealed from the order adjudicating upon this point adversely to him, so that we could not give effect to it, even if we thought there was merit in the contention. We must set aside the order under appeal and direct that the sum of Rs. 500 be paid to the decree-holder. We make no order as to costs.

CHAPMAN J. I agree.

S. M.

*Appeal allowed.*

## CRIMINAL REVISION.

*Before Mr. Justice Holmwood and Mr. Justice Imam*

BHAGABAT SHAHA

v.

SADIQUE OSTAGAR.\*

1912  
 ———  
 April 19.

*Criminal Procedure Code (V of 1898), s. 522—Restoration of immoveable property—Appellate Court, power of—Jurisdiction.*

An order under s. 522 of the Criminal Procedure Code can only be made by the Court which convicts, of an offence attended with criminal force. An Appellate Court has no power to make such an order restoring possession of immoveable property.

\* Criminal Revision, No. 415 of 1912, against the order of H. M. Cowan, Additional District Magistrate of Dacca, dated Jan. 19, 1912.

*Narayan Govind v. Visaji* (1) referred to.

THE facts are shortly these: On the 13th of August 1911 the complainant on behalf of his master instituted a case of trespass against the petitioner and another. The accused were tried under section 448 of the Indian Penal Code by a Sub-Deputy Magistrate of Dacca. The Sub-Deputy Magistrate discharged one and convicted the other and sentenced him under section 448 of the Indian Penal Code, to pay a fine of Rs. 50, in default to suffer imprisonment for one month. Against this order the accused appealed to the Additional Magistrate of Dacca who, on the 19th of January 1912, dismissed the appeal and directed the complainant to be put in possession of the property—the subject matter of dispute.

Against this order of the Additional Magistrate the petitioner moved the High Court and obtained this Rule.

*Mr. J. N. Roy* and *Babu Bhupendra Chandra Guha*, for the petitioner.

HOLMWOOD AND IMAM JJ. We are of opinion that this Rule must be made absolute on the ground on which it was issued. The considerations which moved the Full Bench in the case of *Mehi Singh v. Mangal Khandu* (2) seem to apply with equal or even more force to an order under section 522, Criminal Procedure Code. It is clear that the confirming of a conviction on appeal where the Magistrate had not thought it necessary to act under section 522 cannot make such an order a consequential relief, or an order ancillary in character for which no separate authority is needed. Separate authority under section 522 was distinctly needed before any Criminal Court could have such extraordinary powers as are given thereby. The power

(1) (1898) I. L. R. 23 Bom. 494. (2) (1911) I. L. R. 39 Calc. 157.

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is an unusual one. It is one certainly not inherent in the ordinary Courts of criminal jurisdiction, and it certainly could not be exercised by any person other than the Court which convicted of an offence attended with criminal force and held independently that by such force any person had been dispossessed of any immoveable property, and that independent finding must of course be the finding of the Court of first instance. The Appellate Court cannot come to an independent finding upon a matter which is not before it in appeal. We do not think it necessary to discuss the divergence of opinion between this Court and the Bombay Court as regards the time at which such an order should be passed, but we may say that were we to agree with the view taken by the Bombay Court in *Narayan Govind v. Visaji* (1), the want of jurisdiction in the Appellate Court would thereby be rendered still more clear; for the Bombay Court says that an order made under section 522, Criminal Procedure Code, restoring possession of immoveable property to a person who has been dispossessed of it by criminal force is an independent order, and may therefore be made subsequent to the date of the conviction of the offender and need not be made at the same time as the conviction. If that is so, the Court which had the conviction before it on appeal obviously had nothing whatever to do with the order under section 522, and could not pass an independent order directing restoration of the property. The Rule is made absolute, and the order under section 522 set aside.

S. K. B.

*Rule absolute.*

(1) (1898) I. L. R. 23 Bom. 494.