

Ram Prasad and ors. Vs. State

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Court : Allahabad

Decided On : Oct-29-1957

Reported in : AIR1958All159; 1958CriLJ308

Judge : Raghubar Dayal, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 423, 423(1), 439, 522, 522(1) and 561A

Appeal No. : Criminal Revision No. 1872 of 1955

Appellant : Ram Prasad and ors.

Respondent : State

Advocate for Def. : B.N. Katju, Brief Holder and ;Sushil Kumar, Adv.

Advocate for Pet/Ap. : R.B. Pandey, Adv.

Disposition : Revision dismissed

Judgement :

Raghubar Dayal, J.

1. Ram Prasad and others were convicted of offences under Sections 147, 447 and 352, I. P. C. Subsequent to their conviction, the Magistrate convicting them passed an order under Section 522, Code of Criminal Procedure, ordering them to

restore possession to the complainant Ram Gopal. Possession was actually delivered to the complainant. On appeal, Ram Prasad and others were acquitted by the Assistant Sessions Judge on 19th of September, 1955. The Court observed :

'In view of what I have observed above it cannot be said that the prosecution has satisfactorily established the possession of Ram Gopal on the plots in suit immediately before the occurrence. No case Under Sections 147, 447 and 352, I. P. C. has thus been established. The real dispute between the parties seems to be about their rights in the land but they should be solved through proper Court by proper proceedings.'

2. On 20th of September, 1955, Ram Prasad and others, the acquitted persons, applied to the Assistant Sessions Judge for the restitution of possession over the land in dispute under Section 522, Code of Criminal Procedure. This application was rejected on 17th of October, 1955. It was held that the appellate Court could not pass an order under Section 522, Code of Criminal Procedure, when it acquitted the accused-appellants.

It was further held that though the appellate Court could pass an order of restitution of possession to the accused against whom an order under Section 522, Code of Criminal Procedure had been passed by the trial Court, yet such an order under Section 423 (1) (d), Code of Criminal Procedure could be passed only when the appellate Court was seized of the appeal and not subsequent to its disposal.

3. Ram Prasad and others have filed this revision against the order of the learned Assistant Sessions Judge dated 17th of October, 1955. At the time of hearing of this revision, I was inclined to the view that a reference to a larger Bench would be necessary in view of some previous decisions of this Court with which I was not in full agreement and which views have been expressed practically without any discussion of the points. I have now reconsidered the whole matter and am of opinion that no such reference is necessary for purposes of disposing of this revision.

4. No exception can be taken to the views expressed by the learned Assistant Sessions Judge on both the points. Section 522, Code, of Criminal Procedure is:

'522 (1). Whenever a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation and it appears to the Court that by such force or show of force or criminal intimidation any person has been dispossessed of any immovable property, the Court may, if it thinks fit, when convicting such person or at any time within one month from the date of the conviction order the person dispossessed to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in civil suit.

(3). An order under this section may be made by any Court of appeal, confirmation, reference or revision.'

Sub-section (1) of Section 522, Code of Criminal Procedure authorises the Court convicting a person of certain type of offences committed in certain circumstances, to order the person dispossessed to be restored to the possession of the property. This power can be exercised by any Court of appeal, confirmation, reference or revision also in view of Sub-section (3).

Such Courts can, therefore, also pass an order under Section 522, Code of Criminal Procedure in the circumstances set out in Sub-section (1), that is, when a person is convicted by them or his conviction is upheld by them for specific types of offences. There is nothing in this section which empowers the appellate Court to pass an order for re-delivery of possession to the person acquitted on appeal. In fact, such an order will not come within the purview of Sub-section (1) of Section 522, Code of Criminal Procedure at all.

An acquitted person is surely not a convicted person. He was not dispossessed by Criminal force or show of force or by criminal intimidation. He was dispossessed in compliance with the order of the Magistrate duly passed under Section 522, Code of Criminal Procedure. His dispossession was lawful and the order dispossessing him will have to be set aside by an authority competent to set it aside in proper

proceedings.

5. The learned Assistant Sessions Judge conceded that he could have set aside the Magistrate's order under Section 522, Code of Criminal Procedure, at the time of the disposal of the appeal in view of Section 423 (1) (d), Code of Criminal Procedure. Section 423 deals with the powers of the appellate Court in disposing of an appeal and provides in Clause (d) that the appellate Court may make any amendment or any consequential or incidental order that may be just or proper.

It is clear that such a type of order must be passed when disposing of the appeal and not subsequently when the appellate Court has ceased having jurisdiction over the appeal. The learned Assistant Sessions Judge was, therefore, right that he could not pass an order purporting to be an order under Section 423 (1) (d), Code of Criminal Procedure after he had disposed of the appeal.

5a. In view of the above, the revision against the order of the Assistant Sessions Judge has no force, the order sought to be revised being a correct order.

5b. I may note at once that I have grave doubts about the correctness of the view that an appellate Court, when disposing of an appeal, can pass an order setting aside an order under Section 522, Code of Criminal Procedure, considering such an order to be a just or proper amendment or a consequential or incidental order. I shall enlarge on this subject later on.

6. It has been urged for the applicants that this Court should exercise its own revisional powers and order the restitution of possession to the applicants by setting aside the order of the Magistrate. Such an order, if passed, will not be in the exercise of the powers under Sub-clause (3) of Section 522 of the Code of Criminal Procedure in view of what I have said above.

Such an order would be an order in the exercise of powers under Section 439 read with Section 423 (1) (d) of the Code of Criminal Procedure. The Magistrate's order under Section 522, Code of Criminal Procedure was a correct order, when passed. No revision was filed against that order as an incorrect order. The present revision too does not challenge the correctness of the order under Section 522, Code of

Criminal Procedure on the ground that it could not have been passed when it was actually passed.

The submission for the applicants is that this Court should set aside the order validly passed in the exercise of its revisional jurisdiction in view of subsequent event, the event in this case being that the accused were acquitted on appeal and are no longer convicted persons. I would hesitate to exercise revisional powers in such circumstances unless it be for very strong and clear reasons justifying such interference.

7. I am of opinion that the Code of Criminal Procedure contemplates an order under Section 522 (1), Code of Criminal Procedure, to be a final order. Of course, no appeal is provided against such an order. The Courts of appeal, confirmation reference or revision have been given a power to make an order under Section 522, Code of Criminal Procedure, that is, to order a convicted person to restore possession to the complainant who had been dispossessed by force or show of force or by criminal intimidation. Sub-section (3) does not empower such Courts to set aside an order passed by a Magistrate under Sub-section (1) of Section 522 or even to modify or alter it or to pass any further just orders. It can pass only one type of order and that order can be, as just mentioned, to restore possession to the dispossessed complainant. A comparison of Section 520, Code of Criminal Procedure, prominently brings out this fact.

Sections 517, 518 and 519 provide for orders about certain property in Court at the conclusion of an inquiry or trial. Section 520 empowers Courts of appeal, confirmation, reference or revision to direct the stay of orders passed by the inferior Court and to modify, alter or annul such orders and make any further orders that may be just.

Similar Courts have not been empowered to stay the operation of an order under Section 522, Code of Criminal Procedure, during the pendency of an appeal, or revision or reference and they have not been expressly given any power to modify, alter or annul such order or to make any such order. If the Legislature did intend such Courts to exercise these powers, which are now sought to be held to be incidental powers, Sub-section (3) of S- 522, Code of Criminal Procedure, could

have contained provisions similar to those in Section 520, Code of Criminal Procedure.

8. In this connection it is significant to refer to the provisions of Sub-section (2) of Section 522, Code of Criminal Procedure, which provides that an order under Sub-section (1) will not prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit. This is a clear indication of the fact that the Legislature intended an order under Sub-section (1) of Section 522 to be a final order and did not intend it to be the subject of interference by any superior Court. Such an order was to be final subject to an aggrieved party establishing his right or interest to the immovable property in a civil suit. An order under Sub-section (1) of Section 522 can be revisable like other orders of an inferior Court by the High Court on the grounds of impropriety, illegality or incorrectness of the order itself, that is, on the ground that that order could not have been properly or legally passed under Sub-section (1) of Section 522, Criminal Procedure Code. I have already indicated that that is not the question in the present case.

9. In this view of the matter, there is no jurisdiction for interference with the original order passed by the Magistrate under Sub-section (1) of Section 522, Code of Criminal Procedure, in the exercise of the revisional jurisdiction of this Court.

10. I do not subscribe to the view urged for the applicants that the mere fact that the applicants have been acquitted of the offence, they were convicted of, justifies the restitution of possession of the property in dispute. Acquittal in criminal cases is not always on a definite finding about the accused being in possession or being entitled to possession of the immovable property. Acquittals mostly are on the basis of the Courts entertaining doubts about the correctness of the prosecution version. .

The mere fact of acquittal does not necessarily mean that the acquitted person is entitled to the possession of the property over which possession had been delivered to the complainant under an order of the convicting Court under Sub-section (1) of Section 522, Code of Criminal Procedure. Unless this Court be in a position to say definitely that the accused is entitled to the property and not the

complainant, the question of exercising inherent powers of this Court in the interest of justice does not arise and it cannot be said that justice requires that the acquitted person should be re-delivered possession of the property which had been taken out of his possession under the valid order of a Court.

11. I may refer to certain cases of this Court which have some bearing on the questions considered by me. The first case is reported in *Manki v. Bhagwanti*, ILR 27 All 415 (A). In that case, the District Magistrate moved the High Court to interfere in revision and restore the possession to the acquitted person. It was held, in repelling the contention based on the case reported in *Ram Chandra Mistry v. Nobin Mirdha*. ILR 25 Cal 630 (B), that the High Court had no power to interfere with an order under Section 522, Code of Criminal Procedure, that --

'That case was decided before Act No. V of 1898 came into force. Among the powers conferred on this Court as a Court of revision are all the powers set out in Section 423 of the Code of Criminal Procedure. By Act No. V of 1898 one additional power to those which already existed was added, namely, the power of making any amendment or any consequential or incidental order that may be just or proper. These powers, are very wide, and in our opinion authorise this Court to interfere in a case like the present.'

As mentioned by me earlier, no reasons have been given why an order setting aside an order under Section 522, Code of Criminal Procedure could come within the provisions of Section 423(1) (d), Code of Criminal Procedure, which empowers an appellate Court, when disposing of an appeal, to make any just or proper amendment or any consequential or incidental order.

12. Till Sub-section (3) of Section 522, Code of Criminal Procedure was enacted in 1923, it had been held that a Court of appeal or revision could not pass an order under Sub-section (1) of Section 522, Code of Criminal Procedure, and that such an order could be passed only by the Court which convicted a person. It follows from this that an order under Sub-section (1) of Section 522, Code of Criminal Procedure, is not a consequential or incidental order vis-a-vis an order of conviction.

It is an independent order. If it was a consequential or an incidental order, there was no necessity of specifically providing for it in Section 522, Code of Criminal Procedure, and such an order could be made by the appellate Court when the trial Court omitted to pass such an order. The appellate Court could not pass this order because it was an independent order.

Anyway, if an order under Sub-section (1) of Section 522, Code of Criminal Procedure, could be said to be a consequential or incidental order to a conviction, the order reversing such an order on an acquittal cannot be said to be a consequential or incidental order as it does not necessarily follow that an order of acquittal must lead to the conclusion that the accused is entitled to the restoration of possession.

Unless it can be held so, no question of justness or propriety would arise and no question would arise of such an order flowing automatically as a result of an acquittal. To me the reasons given in the Calcutta case, referred to above, appear to hold good for the view that the appellate Court cannot reverse an order under Sub-section (1) of Section 522, Code of Criminal Procedure.

13. The next case is reported in *Lachman v. Emperor*, AIR 1924 All 212 (C). There the appellate Court ordered the convicting Court, when confirming the conviction in appeal, to pass an order under Section 522, Code of Criminal Procedure. It was held by Sulaiman, J., as he then was, that such an order could not be passed. It was, however, observed --

'Had some order been passed by the trial Court under Section 522, Criminal Procedure Code, then the appellate Court acting under Section 423, Sub-clause (d) of the Criminal Procedure Code, had power to make any amendment or any consequential or incidental order that might be just or proper and thus to interfere with that order.'

Nothing more is said in that connection and this observation could be just the result of what has been held in ILR 27 All 415 (A).

14. The next case is Malkhan Singh v. Emperor : AIR1945 All226 . In this case, the acquitted persons applied to the Magistrate, who passed the order under Section 522. Code of Criminal Procedure, to rescind his order under that section. Their application was rejected by the Magistrate. Their revision was also rejected by the Sessions Judge. They came in revision to the High Court. Waliullah, J., observed :--

'It seems to me that the point is a very simple one. The question is whether under the circumstances set out above, possession over the house should be restored to the applicants from whom it had been taken away on their conviction and delivered to the complainant. There can be no doubt whatsoever that this Court has power as a Court of revision under Section 439 read with Section 423, Sub-section (1), Sub-clause (d). Criminal P. C., to reverse an order passed by the learned Magistrate under Section 522, Criminal P. C.'

Again, no reasons for the view have been given except that such had been the view in ILR 27 All 415 (A). Section .423(1) (d), Code of Criminal Procedure, provides for the making of any consequential or incidental order. Reversal of orders is contemplated in Clause(c) and can be done in an appeal from any order other than an order convicting or acquitting a person. No appeal is provided against an order under Section 522, Code of Criminal Procedure and, therefore, such an order cannot be reversed by con-sideling an order of reversal to be a consequential or incidental order.

15. The facts of this case would bear out what I have said above that an acquittal does not necessarily mean that the accused is, in law, entitled to the possession of, the property. The learned Judge further observed in continuation of what has been quoted above --

'It has been urged by the learned counsel for the complainant that in this particular case the findings by the appellate Court come to this that the house really belonged to the complainant and he was deprived of the possession of the same on account of the commission of the offence under Section 448, Penal Code. It is, however, clear that after the quashing of the conviction by the appellate Court the accused (the applicants) must be deemed to be innocent of the crime.'

With respect to the learned Judge, it appears to me that the accused was restored possession though he was not entitled to it and the mere presumption of innocence is not a clinching ground to consider restitution of possession to be just. It was, however, observed in the same continuation --

'When once their conviction has been set aside the order passed by the learned Magistrate under Section 522, Criminal P. C., which was obviously passed in consequence of such a conviction must also be set aside and the property should be restored to the accused even though the equities may in a sense be in favour of the complainant.'

With respect, I am of opinion that it is not in consequence of a conviction that an order under Section 522(1), Code of Criminal Procedure, is passed. Such an order is not automatically passed merely on the basis of conviction. The convicting Court has to consider whether it is fit to restore possession to the complainant.

There may be circumstances in which even though an accused is convicted of offences coming within the purview of Sub-section (1) of Section 522, the convicting Court may not consider it fit to restore possession to the complainant. An order under that sub-section, therefore, is an independent order, the necessary condition precedent to the making of that order being that the person, against whom an order is passed, be a convicted person, but such an order is not in consequence of the conviction of such a person.

I do not, therefore, with respect, subscribe to the view that an order under Sub-section (1) of Section 522, Code of Criminal Procedure, must be set aside after the acquittal of the accused even though it be not just to do so. The Court must see, if it is passing an order, which it considers to be incidental or consequential, that it is a just or proper order. It was held in *Mahomed Din v. Emperor*, AIR 1919 Lah 399 (E), that --

'an order under Section 522, Criminal P. C., directing the restoration of immovable property to the person entitled thereto cannot be regarded as a consequential or incidental order within the purview of Section 423(1), Clause(4), of the Code.'

The same view was taken in *Bhagabat Shaha v. Sadique Ostagar*, ILR 39 Cal 1050 (F).

16. It was held in *Gouhari Gope v. Alay Gopini*, ILR 29 Cal 724 (G), that an appellate Court could interfere with an order under Section 522, Code of Criminal Procedure, in view of Clause (d) of Sub-section (1) of Section 423, Code of Criminal Procedure. There is no reason given why such interference would amount to the making of a consequential or incidental order.

17. In *Ahmed Ali v. Keenoo Khan*, ILR 36 Cal 44 (H), an accused was convicted under Section 323, I. P. C. It was also found by the Magistrate that the accused had dispossessed the complainant. The Magistrate did not pass any order under Sub-section (1) of Section 522, Code of Criminal Procedure, in favour of the complainant, rather he passed orders for the return of the property to the party in whose possession they were found and further ordered that the possession of the bungalow be delivered to the accused in whose possession it was found by the police. The High Court set aside these orders holding that --

'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.'

Relying on ILR 27 All 415 (A), they repelled the contention that they could not interfere with an order passed under Section 522, Code of Criminal Procedure. No such question really arose in that case because the Magistrate had passed no order under Section 522, Code of Criminal Procedure. His orders were under Section 517, Code of Criminal Procedure, and those orders could be interfered with under Section 520, Code of Criminal Procedure.

18. In view of the above, I am of opinion that this revision fails. I accordingly dismiss it.