

Hazarimal Vs. the State and ors.

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Court : Rajasthan

Decided On : Apr-17-1950

Reported in : 1950CriLJ1601

Judge : Oak, J.C.

Appellant : Hazarimal

Respondent : The State and ors.

Judgement :

ORDER

Oak, J.C.

1. This is a reference by the learned Sessions Judge, Ajmer-Merwara, recommending that an order Under Section 522, Criminal P.C. be passed in favour of a complainant. Hazari Mai filed a complaint against four persons under Section 447, Penal Code, with the following allegations. On 30th December 1948 the four accused came armed with deadly weapons, threatened to beat Hazari Mai complainant, and took forcible possession of a plot of land belonging to him by demolishing his Bhatti and Math, which stood thereon. The complaint ended in a conviction. Under Section 447, Penal Code. The case was decided on 30th May 1949, On 22nd June 1949, the complainant filed an application to the trial Court Under Section 522, Criminal P.C., praying that possession of the property be restored to him. This application Under Section 523, Criminal P.C. was dismissed

by the learned Magistrate on 20th August 1949 on the ground that he could not deliver possession more than one month after the date of conviction. Against that order dated 20th August 1949 passed by the trial Court a revision application was filed by Hazari Mai complainant in the Court of the learned Sessions Judge. The learned Sessions Judge has now made this reference recommending that an order should be passed in Hazari Mal'a favour Under Section 522, Criminal P.C.

2. The reference has been opposed by the learned Counsel for the accused. He relies upon subs. (3) of Section 522. Sub-section (3) reads thus : 'An order under this section may be made by any Court of appeal, confirmation reference or revision.' It was urged that the learned Session Judge was neither a Court of reference nor a Court of revision. So the recommendation made by the learned Sessions Judge is invalid.

3. In his order of reference the learned Sessions Judge has relied upon Malkhan Singh V. Emperor A.I.R. (32) 1945 ALL. 326 : 47 Cr.L.J. 89 and Abdul Razak v. Emperor A.I.R. (34) 1947 Oudh 1 : 47 Cr. L. J. 718. As against these two rulings, the learned Counsel for the accused relied upon two decisions of the Lahore High Court, In Qhazan v. Mt. Bhag Bhari A.I.R. (19) 193s Lah. 210 : 38 Cr.L.J. 191 it was held that the words "Court of appeal etc." in Section 522 (3) refer to the Courts dealing with the original conviction or trial, and do not refer to the High Court in reference from the order restoring possession, In Mohammad Sharif v. Diwan Singh A.I.R. (27) 1940 Lah. 95 : 49 Cr. L.J. 458 it was held that a Court of reference in Sub-section (3) of Section 522 can only be interpreted as meaning a Court which has the power to refer Hazarimai. v. The State (Oak J. G.) and that is only a Court empowered Under Section 533, Criminal P.C. Hence a Court which has got power to report a case to the High Court for orders is not a Court of reference. There may be some difficulty in looking upon the Sessions Judge as a Court of reference. But there is no such difficulty in accepting a High Court as a Court of revision. There should therefore be no difficulty in holding that a High Court as a Court of revision can pass suitable orders Under Section 522 (3), Criminal P.O. In AswiniKumar v. Sasanka, Mohan Bose A.I.R. (19) 1932 Cal. 750 : (33 Cr. L.J. 868) it was mentioned that the High Court had ample jurisdiction Under Section 522 (3), Criminal P.C. at the time of dismissing an appeal from

conviction Under Section 448, Penal Code. In that ruling it was not expressly laid down that a High Court cannot pass an order Under Section 523 (t), Criminal P.C., at any subsequent stage of the proceeding. In *Savlaram Sadoba v. Baya. nethwar* A.I.R. (29) 1942 Bom. 148 : 43 Cr.L.J. 708 it was held by Beaumont C. J. that, although there be not before the Court any application in appeal or revision against the conviction of the accused, the High Court can Under Section 623 (3) make an order for possession in a proper case in revision against an order dismissing the application for possession. Similarly in *Sahebjan v. Emperor* A.I.R. (87) 1910 pat. 403 : 41 Cr.L.J. 311 it was held that in a proper case the Court of appeal or the Court of revision can pass an order Under Section 522, if such Court is satisfied that an order of the nature is necessary in the interest of justice. In *Syed Umar v. Abdul Qadir* A.I.R. (24) 1937 posh. 7 : 38 Cr. L. J. 333 it was held that the Judge becomes functus officio one month after the conviction. Limitation having expired, a revisional Court cannot enlarge period and restore possession in revision against an order Under Section 522, Criminal P.C. Sub-section (3) comes into play only when appeal or revision is filed against conviction.

4. I agree that a Court will refuse to grant the complainant relief Under Section 828, Criminal P.C. if he moves an application for the first time more than a month after the date of conviction. But that is not the position in the present case. In the present case the complaint Under Section 447 itself contained a prayer that the complainant should be restored to possession. This request contained in the complaint was ignored by the trial Court in its order of conviction dated 30th May 1949. That is why the complainant was forced to make a separate application Under Section 633, Criminal P.C. on 2nd June 1949. This application was made within a month from the date of conviction. It was urged on behalf of the accused that, although the application was made within a month, there was unnecessary delay in making the application. It was explained on behalf of the complainant that he applied for a copy of the judgment of conviction and the copy was supplied to him on 18th June 1949. The application under Section 522, Criminal P.C., was presented on 2nd June 1949. There was therefore no undue delay in making the application. Although the application was moved within a month from the date of conviction, the learned Magistrate could not pass final orders on the application until 20th August 1949, i. e., more than a month after the date of conviction. The

Court thought it necessary to issue a notice of the application to the accused persons. The complainant did all in his powers. In the complaint he requested for an order for restoration. He again reminded the Court on the point by a separate application dated 22nd June 1949, The complainant should not suffer, if the Court could not pass an order within a month as contemplated by Section 522, Criminal P.C. It is true that the period of limitation prescribed in Section 522 has reference to the date of the passing of the order and not to the date of the filing of the application, But on general principles a party should not suffer for delay made by the Court itself in passing its order.

5. Lastly it was urged on behalf of the accused that on merits this is not a fit case for passing an order for restoration. Section 599, Criminal P.C. requires that a person should be convicted of an offence attended by criminal force or show of force etc. It was contended that in the present case, the alleged offence of criminal trespass was not attended by criminal force or show of force. For this contention reliance is placed upon the deposition of P.W. 4. The learned Magistrate does not appear to have relied upon the testimony of P.W. 4, The Court appears to have relied upon the evidence of p. 'Ws. 1, 2, 8 and 5. On a perusal of the judgment dated 30th May 1949 the learned Magistrate appears to have been satisfied that the accused persons came armed and dispossessed the complainant on 30th December 1948. Upon the finding of the learned Magistrate an order should have been passed Under Section 622, Criminal P.C.

6. The reference made by the learned Sessions Judge is accepted. Under Section 522 (3), Criminal P.C., it is ordered that Hazari Lai complainant should be restored to the possession of the plot of land including the Bhatti and Math from which he was dispossessed on Both December 1948. The learned Magistrate is directed to take steps accordingly.