

Basanta Kumar Maity Vs. Kenaram Maity

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Court : Kolkata

Decided On : Dec-04-1952

Reported in : AIR1953Cal393,57CWN163

Judge : K.C. Chunder, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Section 522

Appeal No. : Criminal Ref. No. 50 of 1952

Appellant : Basanta Kumar Maity

Respondent : Kenaram Maity

Advocate for Def. : Manishi K. Das, Adv.

Advocate for Pet/Ap. : Shambhu Nath Banerji, Adv.

Judgement :

ORDER

K.C. Chunder, J.

1. This is a Reference made by the Sessions Judge of Midnapore against an order under Section 522, Criminal P.C, passed by a Magistrate, 1st Class, of Contai. The facts are that the accused person in whose favour the Reference has been made was convicted under Section 325, Penal Code, that is, of using force and

this force was used in connection with dispossession of the complainant from C.S. plot No. 2327. The learned Magistrate definitely found dispossession of the complainant and disbelieved the accused's case that they were fencing their own land and were protected by the right of private defence. Therefore all the elements necessary for Section 522, Criminal P.C. were present. The decision of Harries C.J. in -- 'Samdhu Roy v. Mati Khatik' AIR 1949 Cal 111 (A), has therefore no application as the whole judgment proceeded on the ground that Section 522, Criminal P.C. did not apply in that case because there was no use of force or show of force or criminal intimidation. The learned Sessions Judge made the Reference not on this ground of show of force but on the ground of limitation.

Section 522 lays down that a Magistrate can make the order within one month of conviction. In the present case, the complainant filed a petition to be restored to possession within one month of conviction but as the accused opposite party had gone up to the higher Court, the learned Magistrate, 'suo motu', it appears, without any express order of the higher Court, adjourned further proceedings pending the decision of the higher Court. The petition for Reference by the accused opposite party was rejected by the learned Sessions Judge and the learned Magistrate after one month from the date of conviction passed the present order. It was approximately three months after the order of conviction. Technically, the learned Magistrate was wrong in passing such an order as he is empowered to pass the order within one month. This has been a decision of the revisional Benches of this Court to that effect. No such decision, if I may say so with respect, was at all necessary to be cited because the period is fixed in the Code itself. What was not noticed by the learned Sessions Judge in making this Reference was that as a Court of reference he is empowered to pass that order after one month and therefore there was nothing to prevent his validating the order of the learned Magistrate as the order appears to have been a just order. The learned Sessions Judge did not do so but has made the Reference to this Court and it appears from Section 522 that as a Court of Revision this Court has power to make such an order. Therefore, the order made by the learned Magistrate is made by this Court exercising its power of revision, as the revisional Court mentioned in Section 522, Criminal P.C. It may also be mentioned that the whole of the proceedings were entirely misconceived as possession had already been delivered when the learned

Sessions Judge was moved and made the Reference. There is no provision in Section 522 of the Code of restoring such possession back to the accused person.

2. Under the circumstances, the Reference is rejected.

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