

CALCUTTA HIGH COURT

Abdul Mannan

Vs

Taiyab Ali

(Lodge , J.)

07.02.1947

ORDER

Lodge, J.

1. This Rule arises out of an order passed under Section 522(3), Criminal P.C. The material facts are as follows : The present petitioner Abdul Mannan and six other persons were prosecuted on charges under Sections 143 and 352, Penal Code, and they were placed on their trial before a Magistrate of the first class at Sylhet. The learned Magistrate found all the accused persons guilty under Sections 143 and 352, Penal Code. The learned Magistrate sentenced Abdul Mannan under Section 143 to undergo rigorous imprisonment for a period of one month and also to pay a fine of Rs. 200 and in default to undergo rigorous imprisonment for a further period of two months. The learned Magistrate sentenced the remaining accused persons under Section 143, Penal Code, each to pay a fine of Rs. 40 and in default to undergo rigorous imprisonment for a term of 30 days. No separate sentence was passed under Section 352, Penal Code, upon any of the accused persons.

2. The accused persons appealed against their conviction and sentence; and, on 25th June 1946, the learned Additional Sessions Judge upheld the conviction of all the accused persons under both the sections, but he held that the sentence passed upon the accused, Abdul Mannan was excessive and he, therefore, reduced the sentence upon Abdul Mannan to a sentence under Section 143, Penal Code of a fine of Rs. 100 and in default to undergo rigorous imprisonment for one month. With this modification the appeal was dismissed.

3. Neither the Court of first instance, nor the Court of Session passed any order under Section 522(3), Criminal P.C., when disposing of the appeal or when convicting the accused. Subsequently, on 28th June 1946, the complainant in the case moved the learned Additional Sessions Judge and prayed for an order under Section 522(3), Criminal P.C. On that same day, the learned Additional Sessions Judge passed an order forwarding the application to the trying Magistrate for passing necessary orders. In the meantime, apparently, the trying Magistrate had been transferred and the application was placed before the successor of that Magistrate, who, on 16th July 1946, passed an order which reads as follows:

Convicted party to show cause on 1st August 1946 why the immovable property should not be

restored to the dispossessed persons.

4. Subsequently, on 6th August 1946, the successor to the trying Magistrate passed, the following order: I am not the appellate Court. More than one month has elapsed. Return to the Additional Judge for disposal.

5. The application was accordingly sent back to the learned Additional Judge and the latter on 12th August 1946, passed an order which reads as follows:

On 25th June 1946 judgment was delivered by this Court confirming the conviction of the accused appellants under Sections 143 and 352, Penal Code and on 28th June 1946 the complainant Taiyabali applied to this Court for directing restoration of the property to the complainant Taiyabali who has been forcibly dispossessed of the same by the convicted accused. Under a misapprehension the complainant's application was sent to the trial Court for disposal, but that Court has sent it back to this Court for disposal as it could not legally deal therewith. This being a fit case for ordering restoration of the property to the complainant petitioner Taiyabali, I allow his prayer under Section 522(3), Criminal P.C., and he be restored to possession accordingly.

6. Subsequently, the learned Additional Sessions Judge stayed operation of that order pending result of the present application to this Court. On behalf of the accused Abdul Mannan, it is contended that the order of the learned Additional Sessions Judge was without jurisdiction.

7. The question arises, as to the exact meaning and force of Section 522(3), Criminal P.C. Section 522 provides that in certain cases, 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," and Section 522(3) provides: "An order under this section may be made by any Court of appeal, confirmation, reference or revision." The view has found favour in some Courts that a Court of appeal, confirmation, reference or revision may pass an order under Section 522 at any period, and that the period of one month specified in Section 522(1) has no application to such a Court. The case in Nihal Singh v. Emperor is a case in point. No Calcutta ruling in support of this view has been placed before me, and, with due respect to the learned Judge who decided that case and to the Judges who decided the case on which he relied as an authority, I am unable to accept this view. It seems to me clear that the order contemplated by Section 522(3) is an original order by the Court of appeal, confirmation, reference or revision. It is not merely a modification of an order passed under Section 522(3) by the Court of first instance. In my opinion, the occasion for the exercise of the power conferred upon the Court of appeal, confirmation, reference or revision by Section 522(3) arises only when an appeal for reference or revision against the order of conviction is pending before that Court. If, for instance, the Court of first instance has convicted the accused persons but has omitted to pass an order under Section 522(1) and the accused appeal against their conviction or apply in revision against their conviction, the Court of appeal or revision may uphold the conviction, and pass an order under Section 522 even if the Court of first instance did not do so. But it seems to me that the Court of appeal, confirmation, reference or revision is subject to the same limitation as the Court of first instance, and the Court of appeal, confirmation, reference or revision must pass the order of restoration of possession when upholding the conviction or at any time within one month from the date of the order in appeal,

confirmation, reference or revision upholding the order of conviction. I am unable to accept the view that a Court of appeal, confirmation, reference or revision can pass an original order under Section 522 at any time whatsoever. I am satisfied that such a Court must pass the order at least within one month of disposing of the appeal, reference, confirmation or revision pending before it.

8. In this view, it seems to me that the order passed by the learned Additional Sessions Judge under Section 522(3) was contrary to law. The learned Additional Sessions Judge disposed of the appeal and upheld the conviction on 25th June 1946. He did not pass any order on the application under Section 522 until 12th August 1946, that is to say, more than one month after the date on which he upheld the conviction. In my opinion, he had no jurisdiction to pass the order at that time.

9. The Rule is accordingly made absolute. The order under Section 522(3), Criminal P.C., passed by the learned Additional Sessions Judge is set aside.