

REVISIONAL CRIMINAL.

Before Mr. Justice West and Mr. Justice Nandbhai Haridás.

QUEEN EMPRESS *v.* ABHRA'M UMAR AND ANOTHER.*

Criminal Procedure Code (Act X of 1882), Secs. 517, 520, 523—Order of Magistrate restoring property alleged to be stolen—District Magistrate, power of, to set aside such order.

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Where on acquittal a Criminal Court passes an order for restoration of property under section 517 of the Criminal Procedure Code (Act X of 1882) the proper course for the District Magistrate, if he thinks the order improper, is to direct it to be stayed under section 520, and not to treat the property as subject to an order under section 523 of the Code, and set it aside.

UNDER section 438 of the Criminal Procedure Code this reference was submitted for the orders of the High Court by the Joint Sessions Judge of Broach.

The accused were prosecuted on a charge of theft committed in the act of taking away cotton crop from certain fields. The fields formed a part of a whole *bhág* alleged to have been mortgaged to the wife of one Ardesir. One Ahmed Bagas, one of the sellers of the *bhág*, rented the same from Ardesir's wife. Ardesir on behalf of his wife brought a suit in the Mámlatdár's Court at Broach against Ahmed for possession which was decided in favour of Ardesir's wife. Ardesir alleged that he was given possession of the fields. From the evidence it appeared to the Third Class Magistrate, before whom the accused were charged, that the fields in dispute were never taken possession of by Ardesir as he alleged, and that the accused had been holding them, and paying assessment for many years. For these reasons the Third Class Magistrate discharged the accused, ordering restoration of the property. Ardesir, being dissatisfied with the result, petitioned the District Magistrate on the ground of the impropriety of the said order of discharge, and for the exercise of powers vested in the District Magistrate under sections 435 and 437 of the Code of Criminal Procedure, and prayed that the order of delivery of the property be set aside. The District Magistrate granted the prayer of Ardesir, and set aside the order of the Third Class Magistrate as to the restoration of property. In thus setting aside the order the

* Criminal Reference, 85 of 1884.

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District Magistrate did not question the propriety of the order of discharge, but remarked that the case was not decided according to law.

The Joint Session Judge of Broach stated the reference thus :—

“The District Magistrate did not take any steps under section 437. He reversed the order as regards the disposal of the property in dispute, apparently under section 520 of the Criminal Procedure Code, and it is this order which I wish to submit for the orders of the High Court. Section 517 speaks of property, ‘regarding which any offence appears to have been committed’ and, therefore, does not apply to the present case. The Third Class Magistrate writes : ‘The fields in question have been long in possession of the accused, and were never in that of Ahmed, the defendant in the possession case, and the cotton crop has been cultivated by them. The picking of cotton crop cannot be said to be a gain, by unlawful means, of property to which he was not legally entitled.’ This shows that if any offence was at all committed in respect of the property in dispute, it could have been committed only by the two accused ; and as the Third Class Magistrate discharged them, he virtually admitted that no offence was committed in regard to it. The District Magistrate gives no reasons whatever for his order. The case is, I think, similar to *In re Annápurñabáí*⁽¹⁾.”

WEST, J.—The property having been restored to the accused on their acquittal, the District Magistrate had not authority to reverse the order for its restoration. He could, if he desired to review the Third Class Magistrate’s proceedings, make an order staying execution of the Third Class Magistrate’s order pending the disposal of the review and any reference thereon, but he could not treat property already restored, or which ought to have been restored, as subject to an order under section 523 of the Criminal Procedure Code (Act X of 1882.) We, therefore, set aside the District Magistrate’s order.

Order set aside.

(1) I. L. R., 1 Bom., 630.