

# **Sadho Singh And Ors. vs State Through Baij Nath Vyas on 30 January, 1952**

**Equivalent citations: AIR1952ALL840, AIR 1952 ALLAHABAD 840**

ORDER

P.L. Bhargava, J.

1. This is an application under Article 227 of the Constitution of India. The prayer in the application is that an order, dated 3-7-1951, made by the City Magistrate of Banaras, under Section 522, Criminal P. C., be set aside. The order was made in the following circumstance: The applicants, Sadho Singh, Badri Koeri, and Sheo Nath Koeri, were prosecuted for offences punishable under Sections 426, 447 and 506, Penal Code on a complaint filed by Baij Nath Vyas. They were tried by a Panchayati Adalat. The Adalat found Sadho Singh guilty under Sections 426 and 447, Penal Code, and convicted and sentenced him thereunder. Sadho I Singh was found not guilty under Section 506, Penal Code. The other two applicants were not found guilty of any offence, and they were acquitted. It appears that after the case against the applicants had been decided by the Panchayati Adalat, an application was moved before the City Magistrate of Banaras, for an order under Section 522, Criminal P. C., and thereupon the order complained of was made.

2. Learned counsel for the applicants has contended that the order in question was made without jurisdiction. On behalf of the complainant-opposite-party it has, however, been urged that, as a Court of revision, the City Magistrate had the jurisdiction to make the order under Sub-section (3) of Section 522, Criminal P. C. The reply of the applicants' counsel to the contention just mentioned is that the City Magistrate is not a Court of revision under the Code; and that the jurisdiction which he could exercise in revision under Section 85, U. P. Panchayat Raj Act was only, in certain circumstances, to quash the order made by the Panchayati Adalat or to cancel its jurisdiction.

3. Section 522, Criminal P. C., is in these terms:

"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 immoveable 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 immoveable property which any person may be able to establish in a civil suit.

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

4. Sub-section (1) of Section 522, Criminal P. C., empowers a Court trying a case relating to an offence attended by criminal force or show of force or by criminal intimidation, if it appears to that Court that by such force or show of force or criminal intimidation any person has been dispossessed of any immovable property, while convicting the person charged of such an offence or at any time within one month from the date of conviction to order the person dispossessed to be restored to the possession of the same. Admittedly, the City Magistrate was not trying the case against the applicants. Sub-section (3) of Section 522 empowers any Court of appeal, confirmation, reference or revision to make an order under Section 522. Before an order can be made under the said section it must be established that any person has been convicted of an offence attended by criminal force or show of force or by criminal intimidation and it must appear to the Court called upon to make the order that by such force or show of force or criminal intimidation any person has been dispossessed of any immovable property.

5. Let us see if this essential condition for the making of the order under Section 522, Criminal P. C., was fulfilled in the present case. A reference to the judgment of the Panchayati Adalat goes to show that in the case there was no satisfactory evidence to establish an offence under Section 506, Penal Code. In other words, it was not proved that the applicants were guilty of an offence of criminal intimidation. The Panchayati Adalat found as a fact that Badri Koeri and Sheo Nath Koeri had no concern with the land in dispute, and nor had they any concern with the alleged occurrence; and that Sadho Singh alone had reploughed the field and thereby caused loss and damage to the complainant. There is nothing on the record to show that the applicants or any of them had in reploughing the field used any criminal force or done so by any show of force or by criminal intimidation. On the other hand, as already stated, there was no evidence in the case of any criminal intimidation on the part of the applicants. The mere fact that the field had been reploughed by Sadho Singh does not necessarily show that he had used any criminal force or acted by any show of force or criminal intimidation. In fact, there is no evidence to show that at the time when the field was reploughed the complainant or any one else was present in the field. Sadho Singh might have acted in the manner he did to establish any bona fide claim to the land. Consequently there was nothing on the record to show that the criminal trespass for which the applicants were being prosecuted was attended by criminal force or show of force or by criminal intimidation, or that the complainant had been dispossessed of the land in dispute by any such force. That being so, the essential condition for the making of the order under Section 522 of the Code was not fulfilled and no case was made out for the making of the order in question.

6. Assuming for the sake of argument that a case had been made out for the making of the order, the question still remains whether the City Magistrate had any jurisdiction to make the same. The City Magistrate is not a "Court of revision" within the meaning of that expression used in Sub-section (3) of Section 522, Criminal P. C. The Court of revision referred to in Sub-section (3) of Section 522 is obviously the Court of revision which can exercise the powers of such a Court under the Code; and it does not include the Court "of a Sub-Divisional Magistrate empowered to exercise revisional jurisdiction under any special enactment, like the Panchayat Raj Act. For the purposes of this case, it

was not disputed before me that the City Magistrate occupied the position of a Sub-Divisional Magistrate. Therefore, the City Magistrate not being a Court of revision within the meaning of that expression used in Sub-section (3) of Section 522 of the Code had no jurisdiction to make the order under the said section.

7. Even if we were to assume that the City Magistrate could make an order under Section 522, Criminal P. C., firstly, as already pointed out, no case for making such an order was made out, and secondly, there was no revision pending before the Magistrate at the time when the order was made or at any time before that. In order to enable any Court, in the exercise of its revisional jurisdiction, to make any order in a case, the case must be before the Court. As we have already seen, before any Court can make an order under Section 522 of the Code, it has to be satisfied that the possession was disturbed in the circumstances mentioned in the section. In my opinion, the section does not contemplate the making of an order under the said section by a Court of appeal or revision in the absence of an appeal or revision. Lastly, the revisional jurisdiction which the City Magistrate could exercise under Section 85 of the D. P. Panchayat Raj Act did not entitle him to make an order like the one in question. Section 85 of the Panchayat Raj Act provides that if there has been a miscarriage of justice or if there is an apprehension of miscarriage of justice in any case, suit or proceeding, the Sub-Divisional Magistrate in respect of any case .... may on the application of any party or on his own motion, at any time in a pending case, suit or proceeding, as the case may be, and: within sixty days from the date of a decree or order, call for the record of the case, suit or proceeding, as the case may be, from the Panchayati Adalat and may for reasons to be recorded in writing: (a) cancel the jurisdiction of the Panchayati Adalat with regard to any suit, case or proceeding, or (b) quash any decree or order passed by the Panchayati Adalat at any stage.

8. As a Court of revision, under Section 85, U. P. Panchayat Raj Act, therefore, the City Magistrate<sup>1</sup> could only exercise the limited jurisdiction prescribed under the said section. The City Magistrate, not being a Court of revision under the Code of Criminal Procedure, had no jurisdiction in a case cognizable or triable by a Panchayati Adalat, to make an order in exercise of the powers conferred upon such a Court of revision under Section 522, Criminal P. C.

9. Learned counsel for the complainant has argued that Section 522, Criminal P. C. contemplates an independent application and the Panchayati Adalat having no jurisdiction to entertain such an application, the application could be made to the City Magistrate who had jurisdiction over the subject-matter of the dispute. The application could, however, be made only to the Court trying the case, the Court of appeal, confirmation, reference or revision. The City Magistrate was admittedly not the trial Court or the Court of appeal, confirmation or reference; and I have shown above that it could not be treated as a Court of revision. Consequently, the application for an order under Section 522 of the Code could not be made or entertained by the City Magistrate.

10. It follows, therefore, that the City Magistrate had no jurisdiction to entertain the application or to make an order of restoration of possession in the present case under Section 522, Criminal P. C.; and the order being without jurisdiction is liable to be set aside.

11. The application is, therefore, allowed and the order passed by the City Magistrate of Banaras on 3-7-1951, directing restoration of possession is set aside. It will be open to the complainant, if he has been wrongfully dispossessed, and if ho is so advised to seek his proper remedy according to law