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**(1945) 01 AHC CK 0022**

**Allahabad High Court**

**Case No:** None

Malkhan Singh and  
Another

APPELLANT

Vs

Emperor

RESPONDENT

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**Date of Decision:** Jan. 22, 1945

**Acts Referred:**

- Criminal Procedure Code, 1898 (CrPC) - Section 522
- Penal Code, 1860 (IPC) - Section 448

**Citation:** AIR 1945 All 226 : (1945) 15 AWR 68

**Hon'ble Judges:** Wali Ullah, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

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**Judgement**

@JUDGMENTTAG-ORDER

Wali Ullah, J.

This is an application in revision by Malkhan Singh and Latoor Singh for restoration of possession over a house from which they allege, they were dispossessed under the orders of the learned Magistrate u/s 522, Criminal P.C. It appears that Tej Bir Singh filed a complaint against the applicants for their prosecution u/s 448, Penal Code, for forcible entry into a house after breaking open the lock. The applicants were convicted by the learned Magistrate but the conviction was set aside on appeal. It appears, however, that after the conviction of the applicants by the learned Magistrate and before the order of the appellate Court the complainant Tej Bir Singh obtained possession of the house under the order of the learned Magistrate u/s 522, Criminal P.C. After their acquittal, the applicants moved the learned Magistrate for rescinding his previous order delivering possession to the complainant. The learned Magistrate, however, by his order dated 28th January 1944 rejected their application. Thereafter an application in revision was filed before the learned Sessions Judge which was, however, unsuccessful. The applicants

have now come up in revision against the order of the learned Sessions Judge.

2. I have heard learned Counsel in support of the application and also the learned Counsel who appears for Tej Bir Singh, the complainant. It seems to me that the point is a very simple one. The question is whether under the circumstances set out above, possession over the house should be restored to the applicants from whom it had been taken away on their conviction and delivered to the complainant. There can be no doubt whatsoever that this Court has power as a Court of revision u/s 489 read with Section 423, Sub-section (1), Sub-clause (d), Criminal P.C. to reverse an order passed by the learned Magistrate u/s 522, Criminal P.C. It has been urged by the learned Counsel for the complainant that in this particular case the findings by the appellate Court come to this that the house really belonged to the complainant and he was deprived of the possession of the same on account of the commission of the offence u/s 448, Penal Code. It is, however, clear that after the quashing of the conviction by the appellate Court the accused (the applicants) must be deemed to be innocent of the crime. When once their conviction has been set aside the order passed by the learned Magistrates u/s 522, Criminal P.C., which was obviously passed in consequence of such a conviction must also be set aside and the property should be restored to the accused even though the equities may in a sense be in favour of the complainant. In *Rughnath v. Raghunath Sahai* ("29) 118 I.C. 392 (Lah.) a learned Judge of the Lahore High Court following earlier decisions of the Chief Court of the Punjab has held that an application like the present one must be allowed and the order of the learned Magistrate must be set aside. The same point has been decided in the same sense in *Lal Chand v. Dasondiu* ("23) AIR 1923 Lah. 15. On the facts of the present case, I do not find any justification whatsoever for maintaining the order of the learned Magistrate whereby he directed the delivery of possession of the house to the complainant. I accordingly set aside the order of the learned Magistrate directing the delivery of possession of the house in question to the complainant u/s 522, Criminal P.C. The possession of the house must be restored to the applicants.