

**(1912) 04 CAL CK 0056**

**Calcutta High Court**

**Case No:** None

Bhagbat Shaha

APPELLANT

Vs

Siddique Ostagar

RESPONDENT

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**Date of Decision:** April 19, 1912

**Citation:** 16 Ind. Cas. 176

**Hon'ble Judges:** Imam, J; Holmwood, J

**Bench:** Division Bench

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### **Judgement**

1. We are of opinion that this Rule must be made absolute on the ground on which it was issued. The considerations, which moved the Full Bench in the case of Mehi Singh v. Mangal Khanda 12 Ind. Cas. 297 : 16 C.W.N. 10 at p. 13 : 14 C.L.J. 437 : 39 AC. 157 : 12 Cr.L.J. 529 seem to apply with equal or even more force to an order u/s 522, Criminal Procedure Code. It is clear that the confirming of a conviction on appeal, where the Magistrate had not thought it necessary to act u/s 522, cannot make such an order a consequential relief, or an order ancillary in character for which no separate authority is needed. Separate authority u/s 522 was distinctly needed before any Criminal Court could have such extraordinary powers as are given thereby. The power is an unusual one. It is one certainly not inherent in the ordinary Courts of Criminal Jurisdiction and it certainly could not be exercised by any person other than the Court which convicted of an offence attended with criminal force and held independently that by such force any person had been dispossessed of any Immovable property; and that independent finding must, of course, be the finding of the Court of first instance. The Appellate Court cannot come to an independent finding upon a matter which is not before it in appeal. We do not think it necessary to discuss the divergence of opinion between this Court and the Bombay Court as regards the time at which such an order should be passed ; but we may say that were we to agree with the view taken by the Bombay Court in Narayan Govind v. Visaji 23 B. 494 the want of jurisdiction in the Appellate Court would thereby be rendered still more clear; for the Bombay Court says that an order made u/s 522, Criminal Procedure Code, restoring possession of Immovable property to a person

who has been dispossessed of it by criminal force, is an independent order, and may, therefore, be made subsequent to the date of the conviction of the offender and need not be made at the same time as the conviction. If that is so, the Court which had the conviction before it on appeal obviously had nothing whatever to do with the order u/s 522 and could not pass an independent order directing restoration of the property.

2. The Rule is made absolute and the order u/s 522 set aside.