**(1955) 08 CAL CK 0039**

**Calcutta High Court**

**Case No:** Criminal Revision Case No. 812 of 1955

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| Md. Shafique and Others | APPELLANT |
| Vs | |
| Maleka Khatun | RESPONDENT |

**Date of Decision:** Aug. 23, 1955

**Acts Referred:**

- Penal Code, 1860 (IPC) - Section 147, 341, 441, 447, 448

**Citation:** 60 CWN 440

**Hon'ble Judges:** Debabrata Mookerjee, J

**Bench:** Single Bench

**Advocate:** S.S. Mukherjee and S.R. Imam, for the Appellant;Ajoy Kumar Basu, for the Respondent

**Judgement**

Debabrata Mookerjee, J.

These three petitioners were tried by a Magistrate at Alipore upon charges u/s 147, 341 and 448 of the Indian Penal Code. The trying Magistrate believed the evidence that was adduced before him, convicted the petitioners of the three charges and sentenced each of them to suffer rigorous imprisonment for four months under sections 147 and 448, the sentences being directed to run concurrently. No separate sentence was, however, passed u/s 341 of the Indian Penal Code. The Magistrate further directed u/s 522 of the Code of Criminal Procedure restoration of possession of a house to the complainant opposite party. An appeal was taken against the convictions and sentences and the learned Additional Sessions Judge, who heard the appeal set aside the convictions under sections 147 and 341 of the Indian Penal Code, but maintained these u/s 448 and substituted a sentence of Rs. 25 each in default rigorous imprisonment for two weeks each for the substantive sentence of imprisonment passed under the section by the Magistrate. It appears that there was no order made by the learned Additional Sessions Judge as respects possession directed to be delivered u/s 522 of the Code of Criminal Procedure. The petitioners thereafter moved this Court and obtained the present Rule.

2. The allegations against the petitioners briefly stated were that on the 14th of April, 1953, these petitioners along with others numbering about 10 to 15 entered the complainant''s room, threw away her movables, beat her up and drove her out of the room. Evidence was called by the complainant in support of the case which she made and charges of rioting, of wrongful restraint and of criminal trespass were framed against the petitioners. The petitioners pleaded not guilty to the charges and the defence appears to be that the petitioner Shafique had purchased the land with the structures from one Mariam Bibi and the other two petitioners were tenants in possession under him.

3. I am bound to observe that this case does not appear to have been properly handled in either of the Courts below. The allegations which the complainant made were perfectly plain and whatever evidence the complain-ant had in support of the allegations, if put before the Court in proper perspective, might have helped to establish the case which the complainant initially wanted to make. But the course of the proceedings before the Magistrate took a rather tortuous turn and a plain and simple case was encumbered with unnecessary details with the result that the Judge on appeal did not find it possible to uphold the convictions on the main charges under sections 147 and 341 of the Indian Penal Code.

4. Sitting in revision, I have to see whether upon the findings arrived at by the learned Additional Sessions Judge, who was the final Court of fact the convictions of the petitioners u/s 448 of the Indian Penal Code can be upheld. It is to be observed that the learned Judge did not feel persuaded to accept the uncorroborated testimony of the complainant so far as the two charges under sections 147 and 341 were concerned and in that view he acquitted the petitioners of those charges. These acquittals therefore prevail and they'' mean in law that the elements of the offences with which the petitioners were charged were not proved. The only finding which the learned Judge-seems to have; arrived at as respects the, remaining charge u/s 448 is that the petitioners "criminally trespassed into the room of the complainant and drove her out of the room and threw away her. articles in the yard". The evidence which might properly feed this charge is not specifically referred to although the same was discussed in connection with the other charges in respect of which the learned Judge came to the conclusion that they had not been established. Section 441 of the Indian Penal Code defines criminal trespass in these words:

Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, is said to commit ''criminal trespass''.

5. It is therefore essential to find upon evidence that there was the intention on the part of the person charged to commit an offence or to intimidate, insult or annoy the person in possession of the property in question. There is no finding reached by the learned Judge that there was the intention on the part of the petitioners to

intimidate or to insult or annoy the complainant. The question is if, upon the evidence such as it is, and the rather indirect, inconclusive finding of the learned Judge himself, it can be said that there was the intention on the part of the accused petitioners to commit an offence. The learned Judge does not find What offence, "if any. these petitioners intended to commit. It is merely said that the petitioners criminally trespassed into the room. That I consider to be only begging the question. Either it has to be found that there was the intention on the part of the accused petitioners to intimidate, insult or annoy or it has to be established that there was the intention to commit an offence. In the circumstances of the present case, it is extremely risky to hold that there was an intention to commit an offence in the absence of clear and definite finding as respects the offence which was. intended to be committed. It is to be recalled that the specific offences with which the petitioners had been charged under sections 147 and 341 were held not proved by the Judge himself I understand the acquittals as meaning and1 implying acquittals for all purposes. An acquittal on a charge means that elements necessary to constitute the offence charged have not been proved by the evidence called. Consequently, I am bound to say that when the learned Additional Sessions Judge held that the charges of rioting and of wrongful restraint had not been proved, that meant and implied that the elements or ingredients of these offences had not been established by the evidence on the record. It would be in my view, speculations of the worst type to hold that these petitioners were somehow bent upon mischief although the evidence fell short of the proof of rioting or of wrongful restraint and intent to commit some unnamed offence survived the acquittals. That would be a piece of speculation which could never be indulged in administering criminal law. Definite charges were made against the petitioners and those charges were held not proved. In the absence of a definite finding that some specific offence was intended to be committed as shown by the evidence, I am not prepared to say that the element of section 448 relating to intent to commit an offence can be said to have been established. As I have already observed, the learned Judge merely says that the petitioners criminally trespassed into the room and threw away the articles and drove her out of the room. Driving out of the room, and throwing away of the articles were the essential features of the evidence which was adduced in the case to support the charge u/s 447 of the Indian Penal Code. The learned Judge did not feel persuaded to act upon that evidence on the ground that it was not fit to be believed in the absence of other evidence of a corroborative nature. I cannot possibly think that the learned Judge while upholding the conviction u/s 448 meant to rely upon a part of the evidence which he himself has rejected as unreliable. The convictions of the petitioners u/s 448 of the Indian Penal Code have thus been made to depend upon an assumed intent to commit an imagined offence. I must therefore hold that the requirements of section 448 have not been fulfilled. It is not open to the Court to find in a case of this kind that there was some sort of intent to commit some offence. The Court''s clear duty is to find what that offence is before it can very well convict an accused person u/s 448 of the Indian Penal Code where the intent to

commit an offence is relied upon as an element of the offence.

6. The result therefore is that the convictions and the sentences u/s 448 of the Indian Penal Code are set aside.

7. It appears that the order made by the learned Magistrate u/s 522 was not challenged before the learned Judge on appeal. It might have been an oversight on the part of the petitioners. In any event, the matter was canvassed again before the learned Magistrate, who appears to have dealt with it for the second time and modified his own previous warrant for delivery of possession. Against that order the learned fudge was moved but he declined to interfere. There cannot be the slightest doubt that the order for restoration of possession in this case whenever passed and by whomsoever made u/s 522 could be sustained only when it is proved that an offence had been committed attended with force or show of force. The learned Judge on appeal acquitted the petitioners of charges under sections 147 and 341 of the Indian Penal Code, but he affirmed the convictions u/s 448 which I have just set aside.

8. The result therefore is that since the petitioners have been acquitted of all the charges that were framed against them, there cannot consequently be any order u/s 522 of the Code of Criminal Procedure directing delivery of property to the complainant. The order made by the learned Magistrate u/s 522 must therefore be set aside. The Rule is accordingly made absolute. The fines, if paid, shall be refunded and the order u/s 522, Cr. P.C, is vacated.