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**(1968) 08 AHC CK 0006**  
**In the Allahabad High Court**  
**Case No : Criminal Reference No. 240 of 1967**

Ram Kishan and others

APPELLANT

Vs

Rameshwar Dayal and others

RESPONDENT

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**Date of Decision :** 09-08-1968

**Acts Referred:**

Criminal Procedure Code, 1898 (CrPC) — Section 438, 539B

**Citation :** (1968) 38 AWR 608

**Hon'ble Judges :** Yashoda Nandan, J;Gyanendra Kumar, J

**Bench :** Division Bench

**Advocate :** S.S. Tewari, for the Appellant; V.K.S. Chaudhary and Dy.  
Government Advocate for opposite parties, for the Respondent

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## Judgement

Gyanendra Kumar, J.—The learned Single Judge has referred the following question for decision by a Bench:

Whether a revisional court has the authority to make a local inspection u/s 539B, Code of Criminal Procedure.

2. The facts of the case are that on 4-8-1966 the first Respondent, Rameshwar Dayal Tripathi filed an application u/s 145 Code of Criminal Procedure against Ram Kishan and four others (who are Petitioners now) alleging that he was the owner in possession of a building and its siting in mohalla Parwaran Jhansi, bearing house Nos. 50, 51, 52 and 55/1; while the opposite parties (Ram Kishan and four others) were the owners of the adjoining house. The allegation of Rameshwar Dayal complainant was that Ram Kishan and others started construction of walls towards the northern portion of his land and thereby interfered with the complainant's possession thereon. He further said that on his protest, the opposite parties rushed to beat him but he was rescued by the witnesses. He thus alleged that there was an apprehension of the breach of peace with regard to the land in question. Rameshwar Dayal filed a F.I.R. at the P.S. on 2-8-1966 and followed it up by a complaint in the court of the City Magistrate, Jhansi. Rameshwar Dayal however conceded that beyond his land lay

the joint land of the parties, immediately towards the north. On being asked by the City Magistrate, the Kotwali police submitted a report saying that there was an apprehension of breach of peace in respect of the disputed land. On, 16-8-1966 the Magistrate passed a preliminary order and directed the attachment of the land.

3. The O.Ps. (Ram Kishan and others) contested the claim of Rameshwar Dayal and stated that they had completed the constructions over their own land in April, 1966 and were not making any construction in August 1966 as alleged by Rameshwar Dayal complainant and that they were already in possession of the disputed land for long. The learned Magistrate, after considering the oral and documentary evidence as also the affidavits of the parties, came to the conclusion that it was Rameshwar Dayal Tripathi who was in possession of the disputed land at all relevant times and forbade by his order dated 2-12-1966 Ram Kishan and others from interfering with his possession. The S.O. Kotwali was accordingly directed to hand over the attached property to Rameshwar Dayal Tripathi.

4. Aggrieved by the above order of the City Magistrate, Ram Kishan and others filed Cr. Revision No. 28 of 1966 in the court of the S.J. Jhansi on 3-12-1966 u/s 435 Code of Criminal Procedure and made a request to the Judge to make a local inspection. This request was accepted by the learned S.J. who on local inspection found the existence of a closed door in the dividing wall between the houses of the parties. Major portion of that door was found closed up but there was an opening measuring 2 ft. ? 9 inch ? 7 inch. According to the revisionists (Ram Kishan and others) the partial opening in the closed up door had been created by Rameshwar Dayal during the pendency of the proceedings u/s 145 Code of Criminal Procedure in order to create evidence in his favour.

5. On the other hand Rameshwar Dayal asserted before the Sessions Judge that originally the whole door was open and was used by him for going over the land, but Ram Kishan and others closed up the same, leading to the litigation in question. The learned Sessions Judge has remarked that during the pendency of the proceedings u/s 145 Code of Criminal Procedure none of the parties had put forth the above claims with regard to this door. The Sessions Judge, therefore, came to the conclusion that the door stood closed in its entirety for long and that the small opening had now been created during the pendency of the litigation to show that through that door Rameshwar Dayal had a passage to the disputed land. On the basis of his inspection of the locality the learned S.J. held that the disputed land was not approachable, except through the main door of the revisionisms and inasmuch as Rameshwar Dayal Tripathi did not assert in the inquiry u/s 145 Code of Criminal Procedure that he used to approach the land in dispute through the said door, he was not in possession of the land. The learned Sessions Judge, therefore made a reference to the High Court with the recommendation that the order passed by the City Magistrate be set aside and the application of Rameshwar Dayal Tripathi u/s 145 Code of Criminal Procedure

be dismissed.

6. Mr. V.K.S. Chaudhry, appearing for the revisionists (Ram Kishan and others) says that he had pressed before the learned Single Judge (and he still argues before us) that the S.J. in the exercise of his powers Under Sections 435 and 438 Code of Criminal Procedure had no jurisdiction to inspect the locality and base his recommendations or findings thereon, even for the limited purpose of appreciating the evidence on record. Mr. Chaudhry however concedes that when the High Court exercises its revisional jurisdiction u/s 439 Code of Criminal Procedure it has the same powers as are conferred on a court of appeal for taking additional evidence u/s 428 Code of Criminal Procedure and that either under the aforesaid Section 428 or in its inherent jurisdiction u/s 561-A Code of Criminal Procedure the High Court can make local inspection for the purpose of properly appreciating the evidence on record, as contemplated by Section 539-B Code of Criminal Procedure. Nevertheless, Mr. Chaudhry contends that the S.J. has no such power or authority to make local inspection while exercising his limited jurisdiction Under Sections 435 and 438 Code of Criminal Procedure, particularly when he has no right to upset the order or judgment of the court below but can only make a reference to the High Court with his recommendation in the matter. That being so, the question referred to us for decision is a little too widely worded inasmuch as both that High Court as well the Sessions Court can well be described as "revisional court". In order to answer the real controversy between the parties the question referred to us is modified as under:

Whether a Sessions Judge exercising his jurisdiction Under Sections 435 and 438 Code of Criminal Procedure has the authority to make a local inspection u/s 539-B Code of Criminal Procedure?

7. In order to answer the above question, we have first of all to examine the scope and ambit of Section 539-B. It was for the first time introduced in the year 1923. The relevant Clause (1) of Section 539 B Code of Criminal Procedure, runs thus:

(1) Any Judge or Magistrate may at any stage of any inquiry, trial or other proceedings, after due notice to the parties, visit and inspect any place in which an offence is alleged to have been committed, or any other place which it is in his opinion necessary to view for the purpose of properly appreciating the evidence given at such inquiry or trial and shall without unnecessary delay record a memorandum of any relevant facts observed at such inspection.

8. Firstly, it is necessary to determine as to what is meant by the words "other proceedings" as used in the above-quoted section. The contention of Mr. Chaudhry is that Section 539-B Code of Criminal Procedure applies only to the original trial or inquiry conducted by the court of first instance; and inasmuch as the phrase "other proceedings" immediately follows the words "any inquiry" or "trial" the phrase is merely ejusdem generis and refers to the "proceedings" before the court of first instance and not before the Appellate or revisional court.

The argument suffers from an obvious infirmity, in as much as Mr. Chaudhry has already conceded that at least the High Court, exercising its appellate or revisional jurisdiction, can make a local inspection. If the words "inquiry" and "trial" were followed merely by the word "proceedings" then perhaps the argument of Mr. Chaudhry would have had some weight but the words used in the section are "at any stage of any inquiry, trial or other proceedings" which clearly indicate that the contemplated proceedings should be other than and distinct from "inquiry" or "trial". The use of the word "other" in this context is very significant. There can be no manner of doubt that appeals, revisions and/or intermediary steps taken by a Judge will be such "other proceedings". There is yet another suggestive expression which finds place in Section 539-B. The words "at any stage" appear immediately before and qualify the words "of inquiry, trial or other proceedings."

9. A litigant who wants to approach the High Court in revision against the judgment or order of a magistrate or other inferior court has to do so through the mediation of the S.J. viz. he has first to file an application before the S.J. u/s 435 Code of Criminal Procedure. The S.J. then deals with the matter in the judicial manner contemplated by Sections 435 and 438 Code of Criminal Procedure and then forwards to the High Court the result of his examination of the record of an inferior court, with his recommendation, if any. Thus the proceedings before the S.J. in such a case clearly constitute a "stage" in the process of entertainment and disposal of a criminal revision by the High Court.

10. It is true that a S.J. exercising his powers Under Sections 435 and 438 Code of Criminal Procedure cannot upset a finding or order of the court below and can merely make a reference to the High Court. But before doing so, he has to embark upon a judicial process of examining the record of the inferior criminal court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed by and as to the regularity of any proceedings of such inferior court (see Section 435 Code of Criminal Procedure). After so examining the record of the inferior court the S.J. has to report for the orders of the High Court the result of his examination and may also make a recommendation that a particular sentence or order be reversed or altered. Therefore, the proceedings contemplated by Sections 435 and 438, Code of Criminal Procedure are essentially judicial in nature and can at least be called a "stage of other proceedings" within the meaning of Section 539-B, Code of Criminal Procedure. Needless to iterate that the expression "other proceedings" clearly mean those distinct from "inquiry" and "trial" and not ejusdem generis or akin thereto. In such "other proceedings" the Sessions Judge can validly visit and inspect any place which in his opinion is necessary to view for the purpose of properly appreciating the evidence recorded in any inquiry or trial conducted by the court below.

11. The Sessions Judge, while exercising his jurisdiction u/s 438, Code of Criminal Procedure has not to act as a mere post office. He has also to report for

the orders of the High Court the result of his examination of the record of the lower court and further, in an appropriate case, to make his recommendation for reversing or altering the finding or order of the subordinate court. It may be that in a given case it might become absolutely necessary for the Sessions Judge to visit the place and make a local inspection in order to correctly appreciate the evidence on record, before referring the matter to the High Court for final orders. As already noted, the use of the words "at any stage of any inquiry, trial or other proceedings" is very significant. The judicial process involved Under Sections 435 and 438 Code of Criminal Procedure is an intermediary stage of the revision, whereby the Sessions Judge conveys the result of his examination of the record of the court below and also makes an interim recommendation for final orders by the High Court. Such proceedings before the Sessions Judge are nothing but "other proceedings" within the meaning of Section 539-B, Code of Criminal Procedure.

12. We are, therefore, clearly of the view that in such "other proceedings" Under Sections 435 and 438 Code of Criminal Procedure the Sessions Judge has jurisdiction to visit and inspect any place or location for the purpose of properly appreciating the evidence adduced in an inquiry u/s 145, Code of Criminal Procedure conducted by the Magistrate concerned.

13. Unfortunately there are no authorities or decisions on the point and since 1923 nobody seems to have challenged the authority of the Sessions Judge to make a local inspection, in an appropriate case, before making a reference to the High Court with or without his recommendation u/s 438, Code of Criminal Procedure. In fact the inquiry held by a Magistrate u/s 145, Code of Criminal Procedure passed through various stages and courts, if it is sought to be challenged in revision. Firstly, it comes before the Sessions Judge or the District Magistrate Under Sections 435 and 438 and finally ends before the High Court u/s 439, Code of Criminal Procedure.

14. Our answer to the question, as reframed by us, is in the affirmative. The record will now go back to the learned Single Judge for disposal of the revision in accordance with law.