

Ramsingh Babanji Vs. State of Mysore

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Court : Karnataka

Decided On : Jan-15-1971

Reported in : 1972CriLJ1212

Judge : M. Nesargi, J.

Appellant : Ramsingh Babanji

Respondent : State of Mysore

Judgement :

ORDER

M. Nesargi, J.

1. The petitioner, who was A-I in C.C. No. 841 of 1969 on the file of the II Magistrate, Bangalore has been convicted and sentenced for an offence under Section 448 of the Indian Penal Code. He was sentenced to undergo simple imprisonment for two weeks and to pay a fine of Rs. 200/- and in default to undergo S. I. for further period of one month. In Criminal Appeal No. 182 of 1970. the I Additional Sessions Judge. Bangalore, has confirmed the conviction. but modified the sentence to one of fine of Rs. 200/- and in default to simple imprisonment for one month.

2. Originally, wife and daughter of the petitioner were A-2 and A-3 in the said case. They were acquitted in the trial Court. The prosecution case is that somewhere in

the year 1962, A-2 executed a mortgage deed in the form of a sale-deed in favour of P. W. 1 the complainant and mortgaged her property a house. On the very day P. W. 1 executed a deed binding himself liable to re-convey the property on the payment of the amount within a stipulated period. On the very day itself. he took a lease-deed from A-1 the petitioner. On the basis of this lease deed P. W. 1 instituted proceedings for eviction under the House Rent Control Act, against the petitioner. He secured an order in his favour. He sought out execution in Execution Petition No. 13 of 1967, and ultimately delivery of possession of the property was ordered on 11-1-1967. It is the case of the prosecution that on 23-3-1967 Amin P. W. 5 executed this order of eviction and handed over possession of the property to P. W. 1. On 24-3-1967 the petitioner broke open the lock put by P. W. 1 to the house and effected forcible entry and kept his things inside the house. Thereafter. an application was filed which resulted in the prosecution of the said three persons.

3. The contention of the petitioner is that he was not aware of the execution proceedings and the delivery of possession on 23-3-1967 was not made when he was present and as such he has not committed any offence.

4. It is to be mentioned that the Magistrate has passed an order under Section 522 of the Criminal Procedure Code directing possession of the house to be got delivered to P. W.

5. Sri Nabhirajaiah, the learned Counsel for the petitioner, contended that there is no material produced on record to show that the petitioner was aware of the execution proceedings and delivery of possession of the property to P. W. 1 on 23-3-1967 and, therefore it cannot be held that he has committed an offence under Section 448 of the Indian Penal Code. He did not contend that the evidence of P. Ws. 2 and 4 about the breaking open of the lock of the petitioner and effecting forcible entry into the house. cannot be accepted. The two courts below have accepted this evidence. Therefore, it is to be held that the facts put forward by the prosecution that on 24-3-1967 the petitioner broke open the lock affixed to the house by P. W. 1 and effected forcible entry and put his things inside the house, have been established.

6. About delivery of possession, there is the evidence of P. Ws, 3 and 5. P. W. 5 is an Amin, He delivered possession of the property to P. W. 1 on 23-3-1967 as per the order passed on 11-1-1967. He has recorded a panchanama also. The executing court has accepted this delivery by P. W. 5 as legal and valid. It is of course, seen that there is no material to show that the petitioner was present at that point of time. It is the petitioner's case that he was employed somewhere else and he returned on 24-3-1967 and that his wife and daughter i. e. A-2 and A-3 were outside the house and he broke open the lock and entered the house, P W. 5 the Amin his stated that at the time of executing the order of the court on 23-3-1967, A-2 and A-3 were present. and he took possession from them and handed over possession to P. W. 1. It is, hence. established that handing over possession of the property to P. W. 1 was made by P. W, 5 in the presence of A-2 and A-3. The natural inference which flows from the above facts and circumstances. is that on the arrival of the petitioner, A-2 and A-3 must have informed him that possession of the property had been delivered by an officer of the Court to P. W. 1. It is, therefore. idle. in my opinion, to contend that the petitioner was not at all aware of the execution proceedings and handing over possession of the property by an Amin to P. W. 1. In the result. the conviction passed on the petitioner cannot at all be interfered with.

7. Sri Nabhirajaiah contended that the provisions of Section 522 of the Criminal Procedure Code would not be applicable to the facts on hand as P. W. 1 was not at all present when the petitioner is alleged to have effected forcible entry into the house and, therefore, the necessary ingredient of use of criminal force by the petitioner is not established. Section 522 (1) of the Criminal Procedure Code, reads as follows:

(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 by such force or show of force or criminal intimidation any person has been dispossessed of any immovable 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.

8. It is not the case of the prosecution that the petitioner dispossessed P. W. 1 of this property by criminal force or show of force or by criminal intimidation. It is its case that the petitioner effected forcible entry into the house by breaking open the lock. It is an undisputed fact that neither P. W. 1 nor anybody on his behalf was present when the petitioner committed this offence. 'Criminal force' is defined in Section 350 of the Indian Penal Code. It reads as follows: 'Whoever intentionally uses force to any person, without that person's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such force he will cause injury, fear or annoyance to the person to whom the force is used, is said to use criminal force to that other.' A reading of this provision shows that the force used intentionally by a person should be to a person, i. e., against a person. It does not contemplate use of force against property. What is established by the prosecution is that the petitioner used force against the property viz. lock affixed to the door of the house by P. W. 1. Apparently the provisions of Section 522 of the Criminal Procedure Code cannot be made applicable to the facts of this case.

9. In *Zamin Hussain Khan v. Emperor* AIR 1934 Oudh 185 (1), it is held that according to the facts established in the case, there was no occasion for use of any force or show of force on the part of the accused (therein) when they took possession of the property as the complainant was absent and no one on behalf of the complainant appeared to prevent the accused from committing the offences of which they had been convicted, and, therefore, the order restoring possession to complainant could not be passed under Section 522 of the Criminal Procedure Code. In *Narain Singh v. Pannalal* AIR 1940 Lah 460, their Lordships have held that the only force that is contemplated by Section 522 of the Criminal Procedure Code is force as applied to a human body, and, therefore, where the complainant (in that case) was dispossessed of his house in his absence no criminal force can be said to have been used to any person and as such no order could have been passed under Section 522 of the Criminal Procedure Code. In *Aswatha Nanayana v. Muneppa* AIR 1943 Mad 257, it is held that an order for restoration of possession cannot be made under Section 522 of the Criminal Procedure Code where the criminal force attending the dispossession complained of is used not against the person dispossessed, but against the property in his absence, and that

Section 522 of the Criminal Procedure Code applies only when criminal force is used against the person. The same is the view expressed in Mahabir v. Rex through Shamdhari AIR 1949 All 228 It is held therein in regard to the provisions of Section 522 of the Criminal Procedure Code that use of criminal force or show of force or criminal intimidation must all be with reference to a person and not with reference to property. Reliance has been placed on this decision in Andanayya v. Irayya AIR 1966 Mys 239. It is held therein that use of criminal force. contemplated under Section 522 of the Criminal Procedure Code, must be with reference to a person and not with reference to the property.

10. In view of the position in law being as above discussed. I hold that the contention put forward by Sri Nabhirajaiah is to be accepted. That part of the order passed under Section 522 of the Criminal Procedure Code, by the courts below is set aside,

11. It is with this modification in the orders passed by the courts below, that this revision petition is dismissed.