

Ramamurthy and ors. Vs. State of Andhra Pradesh and anr.

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Court : Andhra Pradesh

Decided On : Nov-10-1961

Reported in : AIR1962AP263

Judge : Anantanarayana Ayyar, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 173(3), 173(4), 517, 522 and 561-A; [Indian Penal Code \(IPC\), 1860](#) - Sections 448 and 457

Appeal No. : Criminal Misc. Petn. No. 837 of 1961

Appellant : Ramamurthy and ors.

Respondent : State of Andhra Pradesh and anr.

Advocate for Def. : K.V. Satyanarayana, Adv.

Advocate for Pet/Ap. : S.L. Chennakesava Rao, Adv. ;Public Prosecutor, O. Chinnappa Reddi, for the State

Judgement :

ORDER

1. The five petitioners have filed this petition praying for under Section 561-A Cr. P. C. Directing the respondents herein to restore to them (petitioners) the possession of the upstairs portion of House No. 12-1-779 situated at Asifnagar, Hyderabad, wherefrom they (petitioners) were dispossessed by the police.

The relevant facts are as follows:-

The first respondent is the State of Andhra Pradesh represented by the Station House Officer, Asifnagar Hyderabad. The second respondent is P. Laxminarayana son of Ramaswamy. The second respondent filed a complaint against the five petitioner before the police. It resulted in an investigation by the investigation Officer (P. W. 5) and a charge-sheet being filed against the five petitioners as five accused in C.C. No. 91/4 of 1961 in the Court of the VIIth City Magistrate, Hyderabad. The learned Magistrate framed charges under Ss. 448 and 457 I. P. C. Against the second accused, Laxamanamurthy alleging trespass by him (A-2) into house No. 12-1-779 in Asifnagar and discharge the other four accused namely, petitioner 1 to 4. Finally, the learned Magistrate (who was the successor of the Magistrate who had framed the charge against Lakshmanamurthy and discharge the other accused) acquitted Laxmanamurthy. In his judgement, the learned Magistrate directed that 'the house-hold articles if all they are lying in the Court till now, be restored to the possession of the accused'. He did not pass any order as regards the restoration of the possession of the house.

(3) The points which arise for decision and on which arguments have been addressed by both sides are:-

1. Whether this Court has power under section 561-A Crl. P. C. To direct restoration of the possession of the house?

2. If so, whether an order of restoration should be passed in this case directing that the petitioners should be put in possession of the house?

4. Point No. 1:- Section 561-A Crl P. C. Runs as follows:-

'Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any Court or otherwise to secure the ends of Justice'.

(5) In Emperor v. Nazir Ahmed, AIR 1945 PC 18 their Lordships of the Privy Council have laid down that section 561-A gave no new powers, that it only

provided that those which the Court already inherently possessed should be preserved and that section 561-A was inserted, lest it should be considered that the only powers possessed by the Court were those expressly conferred by the Criminal Procedure Code and that no inherent power had survived the passing of that Act.

(6) In *Indian Rai v. Enayat Khan*, : AIR1952 Pat316 the Patna High Court observed thus:- (at page 319):

'The provisions of section 561-A do not confer any inherent power which the Court did not possess before the section was enacted. All these powers mentioned in that section were possessed by the High Court, and this section merely embodies the inherent powers which the High Court used to exercise before this section was enacted. There is no doubt in my mind that this Court possesses the inherent power to right the wrong occasioned to any party by an act of the Court and to prevent abuse of the process of any Court and to act in a manner to secure the ends of Justice. It is inherent in the general jurisdiction of the Court 'to act rightly and fairly according to the circumstances towards all parties involved'

(7) In *Talab Haji Hussain v. Madhukar Purshottam Mondkar*, : 1958 CriLJ701 the origin and scope of section 561-A Cr. P. C. Were referred to and explained by their Lordships of the Supreme Court. They have stated as follows at page 1231 (of SCR) : (at pp. 378-379 of AIR) :-

'Section 561-A was added to the Code in 1923 and it purports to save the inherent power of the High Court.....It appears that doubts were expressed in some Judicial decisions about the existence of such inherent power in the High Courts prior to 1923. That is why the Legislature enacted this section to clarify the position that the provisions of the Code were not intended to limit or affect the inherent power of the High Courts as mentioned in section 561-A. It is obvious that this inherent power can be exercised only for either of the three purposes specifically mentioned in the section. This inherent power cannot naturally be invoked in respect of any matter covered by the specific provisions of the Code. It cannot also be invoked if its exercise would be inconsistent with any of the specific provisions of the Code. It is only if the matter in question is not covered by any specific

provisions of the Code that section 561-A can come into operation subject further to the requirement that the exercise of such power must serve either of the three purposes mentioned in the said section.

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It would be noticed that it is only the High Court whose inherent power is recognised by section 561-A; and even in regard to the High Court's inherent power definite salutary safeguards have been laid down as to its exercise. It is only where the High Court is satisfied either that an order passed under the Code would be rendered ineffective or that the process of any Court would not be secured that the High Court can and must exercise the inherent power under section 561-A. There can thus be no dispute about the scope and nature of the inherent power of the High Court and the extent of its exercise'. Their Lordships of the Supreme court further observed as follows:- (at page 1239 of SCR) : (at page 381 of AIR):-

'It is hardly necessary to add that the inherent powere conferred on High Courts under section 561-A hjas to be exercised sparingly, carefully and with caution and only where such exetcise is justified by the tests specifically laid down in the section itself. After all, procedure, whether criminal or civil must serve the higher purpose of justice; and it is only when the ends of justsice are put in jeopardy by the conduct of the accused that the inherent power can and should be exercised in cases like the present'.

In that case, their Lordships had to decide the question which they formulated as follow (at page 1228 (of SCR)

at page 377 of AIR):-

'Thus the point of law which falls to be considered in the present appeal is whether in the case of a person accused of aailable offence where bail has been granted to him under section 496 of the Code of Criminal Procedure, it can be cancelled in a proper case by the High Court in exercise of its inherent power under section 561-A of the Code of Criminal Procedure?'

Their Lordships stated that the decision on this question would depend on the construction of the relevant sections of the Code and held to the following effects:-

(a) There was no specific provision in the Code of Criminal Procedure to deal with the matter.

(b) The omission of the Legislature to make a specific provision was clearly due to oversight and inadvertence and could not be regarded as deliberate.

(c) If the conduct of the accused person subsequent to his release on bail put in jeopardy the progress of a fair trial itself and if there was no other remedy which could be effectively used against the accused person, in such a case the inherent power of the High Court would be legitimately invoked.

In the present case, it is beyond doubt or dispute, that there is no specific provision in the Code of Criminal Procedure for restoration of possession of immovable property under special circumstances which prevail in this case namely, where the accused were discharged and one accused acquitted subsequently. Section 517 provides for making an order for disposal of property regarding which an offence had been committed. Even assuming that section 517 covers disposal of immovable property also, it only refers to cases of disposal of property produced before it, or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence. It does not apply to a case like this where, regarding immovable property i.e. house there is no finding that there was a commission of offence. Section 522 Cr. P. C. gives power to restore possession of immovable property 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 that by such force or show of force or criminal intimidation any person has been dispossessed of any immovable property. In this case there is no conviction.

Consequently, I agree with the learned advocate for the petitioners that there is no specific provision in the Code of Criminal Procedure for an order directing delivery of possession such as asked for by them (petitioners) in this petition.

(8) It has to be seen whether the order asked for comes within either of the three purposes mentioned under section 561-A. It cannot be said that the relief asked for is necessary to give effect to any order under this Code; nor can it be held that the order is necessary to prevent abuse of the process of any Court. The only question is

whether the order is necessary otherwise to secure the ends of justice (concerned in Point No. 2). I find on this point that the High Court has got inherent power under section 561-A,' Criminal procedure Code

to order redelivery of possession in this case if it is necessary to secure the ends of justice.

(9) Point No. 2: Learned Advocate for the petitioners contends that an order for re-delivery of possession of house as prayed for by them is necessary to secure the ends of justice. For this purpose, it is necessary to state the relevant facts. The prosecution examined five witnesses in support of their case of the following effect.

(10) The complainant (P. W. 3) was in possession of the house. In another portion of the same building, P. W. 2 resided as P. W. 3's house-tenant. P. W. 1 is a chowkidar employed under P. W. 3 and was working as watchman and looking after it (the house). On 3-2-1960, at about 7 p.m. all the five accused came there, over-powered the resistance of P. W. 1, broke the lock of the house and entered into it, Besides P. W. 1, P. W. 2 was also an eye-witness. After P. W. 3 gave complaint to the police the Police Officer (P. W. 5) investigated the

case. During the investigation, the police prepared panchayatnamas, Ex. P-7 and Ex P-7 regarding the scene of the offence etc., in the presence of panchayatdars one of whom was P. W. 4. The police also

evicted the accused from the house and restored possession to the complainant (P. W. 3) A-1 and A-2 are twin brothers.

(11) The accused denied the offence and examined three defence witnesses. D. W. 1 was a clerk of the Municipal Corporation who spoke to the assessment of the

house in the name of Narayanaswamy, the father

of the accused in 1951 to 1953 A. D. but he could not say as to in whose name the house stood registered on the dates of occurrence. D. W. 2 is a neighbour who lives about two hundred paces away from the suit house. D. W. 2 deposed that so far as his knowledge went, the father of P. W. 2 was giving rent to the father of the accused. D. W. 3 is a neighbour living about hundred paces away who admitted that he had no occasion to go to the upper storey of the House and did not know who were living in that portion i.e., the portion concerned in this case. The learned Magistrate held that the prosecution failed to make out any case of trespass against the accused beyond doubt mainly on the following grounds:-

(1) That the prosecution has contravened the provision of section 173 (3) and (4) of the Criminal Procedure Code by not furnishing the copy of the Urdu statement under section 162 Cr. P. C. was actually furnished to the accused but was found to be recorded in English. Thus, the failure to grant the copy in its original form is a breach of mandatory provision of law.

(2) There are civil cases pending in the Civil Court between the parties and therefore, he (Magistrate) did not feel convinced that the prosecution could prove criminal intention of the accused which is the essential element of such offence.

(3) The only eye-witness (P. W. 2) was not independent and support the evidence that there was civil litigation pending between the parties.

(4) The evidence of the rest of the prosecution witness was of no avail as a whole because there was defence evidence that the house was possessed by the father of the accused-persons.

(5) The dispute was of a purely civil nature.

(12) The learned Magistrate also made an observation as follows:-

'As a matter of fact the police had no business to interfere in the civil disputes of the parties by seizing the house-hold articles of the accused persons and

dispossessing the accused from the occupied portion of the house of the accused person.....'

(13) In *Golam Mohd. v. Sarif Baig*, : AIR1960 Ori18 it was held by the Orissa High Court that where the order, in consequences of which delivery of possession was made over to the complainant was set aside, an application by the accused for restoration of possession was under the inherent powers of the Court under section 561-A Cr. P. C. and not under section 522 Cr. P. C. in that case an order was passed by the Magistrate for delivery of possession of the property under section 522 Cr. P. C. That order was set aside by the Orissa High Court. Balakrishna Rao, J., referred to the observation of the Madras High Court in *Rajathammal v. Rajamanickam Pillai*, AIR 1922 Mad 188 (1) as follows at page 23:-

' When use of criminal force is wanting, criminal Courts have no jurisdiction to act under section 522. If possession has been given, it is the duty of the Court to restore the parties to the position in which they were before possession was wrongly given.'

All the same on the special facts of that case the learned Judge observed that the disputes between the

parties was with regard to the rival claims of the title to the property and it would be better that the parties get their rights adjudicated in a civil Court instead of pursuing their remedies in a Criminal Court and directed the opposite party namely. *Sarif Baig*, is so advised, to file a civil suit for possession of the land on the basis of his title to the same. In the present case, there has been an acquittal of the accused. The case of the complainant that the accused committed an offence and that they (accused) obtained possession by committing an offence has not been proved. If there was no offence committed by a person, neither the police nor the Court can ordinarily interfere with the possession of the accused and deprive him of the possession and put somebody else in

possession of the same. It may be that the judgement of acquittal does not specially find that the accused was in lawful possession. The acquittal still stands

and it has not been set aside by a superior Court Consequently, the ordinary course would be to restore the accused to the possession of the upstairs portion of the house.

(14) In *Rami Bai v. Nathu Kalu*, : AIR 1961 MP25 the relevant facts are as follows: Ramibai gave a complaint to the police alleging that Nathu and Kalu, who were father and son along with their wives all entered her house and, after beating her drove her out and threw away the properties she had kept. Police filed chargesheet under S. 452 I. P. C. The Magistrate acquitted the accused and gave a finding that the complainant was not in possession of the house she had claimed and was making a false and frivolous charge with a view to get possession through criminal court. After the acquittal Nathu and possession on the ground that, during the investigation, the police had turned them out of the house and installed the complainant, Ramibai in the house.

The learned Magistrate directed restoration of the house by the Police to Nathu and Kalu after removing the complainant from that house. In that case the learned Judge observed as follows : (at page 26):

'As for the subordinate Criminal Courts that inherent power has not been taken away; but is limited by the express provisions of the Code,Thus, one comes to the conclusion that every criminal Court has got inherent power to make such order as may be necessary to give effect to any order under this Code, or to prevent abuse of process of any Court or otherwise to secure the ends of justice; but a criminal Court other than a High Court cannot invoke this power if there is already an express provision in the Code in this regard.'

Krishnan, J. held that strictly the Court could not pass any order under section 517 or Sec. 522 Cri. P. C. but could pass only in exercise of its inherent jurisdiction. The learned Judge also observed that, on the facts of that particular case the complainant brought a criminal case against the accused without truth or any justification

and succeeded in dispossessing the accused and getting possession for herself from the police during investigation and obtained an unfair advantage which she

did not enjoy before the case and thereby abused the process of criminal Court and that therefore, the Magistrate's order directing the house to be restored to the accused did not call for any interference by the High Court.

In the present case it is true that there is no positive finding by the learned Magistrate that the complainant had filled a false complaint that the accused were lawfully in possession and that by the action of the police the complainant got possession before the alleged occurrence. But all the same there is a judgement of acquittal which

has become final and the accused who were in possession have been dispossessed by the police. Consequently if the accused were not restored to possession then there would be that the complainant would get an unfair advantage of evicting the accused in criminal proceedings though in fact no offence of trespass by the accused was proved and though he (complainant) failed to make out any offence as committed by the accused Ordinarily as a result of the acquittal an order for re-delivery of the property appears desirable. There might be

some extraordinary circumstance which may show that order of re-delivery is not equitable. For example if it appeared from the judgment of the learned Magistrate that the complainant was in exclusive possession originally and that the accused high-handedly took possession (especially if the accused themselves admitted having done so) but still they (accused) were acquitted on some technical ground or by obviously and grossly untenable appreciation of evidence and if it were possible to hold that the police did their duty properly in

restoring the peaceful possession of the complainant the position may be different. But in this case the material evidence is not sufficient to hold that the extraordinary course should be followed of allowing the complainant to retain possession of the upstairs portion of the house and forcing the accused to be out of possession though ultimately four of them have been discharged and one of them was acquitted.

(15) In the result the petition is allowed and redelivery of the property is ordered. The police, (S. H. O. Asifnagar Hyderabad) will restore to the petitioners possession of the upstairs portion of the house No. 12-1-779, situated at Asifnagar Hyderabad from which they were dispossessed within two weeks from the date of receipt of this order. It is hereby made clear that I do not express any opinion in this order about the ownership or other rights of any of the parties in the house.

LE/K.S.B.

(16) Petition allowed.

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