

Jamuna Das Vs. Emperor

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Court : Allahabad

Decided On : Aug-25-1944

Reported in : AIR1945All26

Appellant : Jamuna Das

Respondent : Emperor

Judgement :

ORDER

Mathur J.

1. This is an application in revision by one Jamuna. Das, who has been convicted under Section 448, Penal Code, and has been sentenced to a fine of Rs. 5. He was further ordered under Section 522, Criminal P.C. to return possession of the property in dispute. He appealed against his conviction to the District Magistrate, but his appeal was dismissed. He filed a revision before the Sessions Judge, but that was summarily rejected. The facts of this case are that there are two contiguous houses in the city of Benares Nos. 33/9 and 37/104. The applicant claimed a share in house No. 33/9 as being the daughter's son of one of the owners. It was alleged on behalf of the complainant that on 28th May 1943, while the complainant was at his shop, the applicant some time after 12 noon broke open the lock of the kothri in dispute containing articles for the puja of Thakurji and took possession of it, and when he was questioned by the complainant at about 8 P.M. when the latter returned from his shop, the applicant adopted a threatening

attitude. A complaint was filed the next day and the applicant was convicted as stated above.

2. In this revision two points have been raised before me. One is that the case did not fall under Section 448, Penal Code, as there was nothing to show that the applicant entered into or upon the property with intent to commit an offence or to intimidate, insult or annoy any person in possession of that property. It has been argued that the applicant entered into possession on the strength of his title and in the bona fide belief that he was entitled to have the use of the kothri jointly with the other co-owners. It was also pleaded that this kothri was a part of the house No. 33/9. It has, however, been held as a fact by both the Courts below that it is not a part of the house No. 33/9, but of the house No. 37/104, in which the applicant had no share. In the lower Courts there was no express plea that the applicant entered into possession without any intent to commit an offence or to intimidate, insult or annoy. The only plea taken was about his bona fides; but as it is a necessary ingredient of the offence, we have to see whether it was proved by the prosecution or not. It seems clear to me that when the applicant took possession of the kothri after breaking open the lock he must be presumed to have done it with the intent at least to annoy the complainant. In their commentary on the Law of Crimes the learned authors, Ratan Lal and Dhiraj Lal Thakore, have observed at page 1110:

Where an accused person has forcibly or clandestinely entered a house which he knew to have been definitely closed and barred against him by the owner thereof, in that case the Court may find that the intention to insult or annoy, under such circumstances, was so clearly inherent in the acts of the accused as to form an essential part of the purpose with which entry into the house was effected.

I quite agree with this view and, in my opinion, there can be no manner of doubt that the applicant by having broken open the lock and having entered into the kothri, which was not in his possession but was in the possession of the complainant, behind the back of the latter, was guilty of an offence under Section 448, Penal Code. He was thus rightly convicted and there is no question of interfering with the sentence, which is very light. This part of the revision must, therefore, be rejected. So far as the other part is concerned, the applicant,

however, seems to have a much stronger case. Section 522, Criminal P.C. lays down:

Whenever a person is convicted of an offence attended by criminal force or show of force or by 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, 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.

It will be clear from a mere reading of the section that the offence, in the case of a person against whom Section 522 is applied, must be attended by criminal force or show of force or by criminal intimidation and also that it must have been by such force or show of force or criminal intimidation that any person should have been dispossessed of any immovable property. Both these ingredients seem to me to be wanting in this case. On behalf of the prosecution a reference has been made to Section 441, Penal Code, in which criminal trespass is defined. Section 441 is divided into two parts. The first part lays down:

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.

Then the second part begins with these words: 'Having lawfully entered into or upon such property' and it goes on

unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit criminal trespass.

To me it seems perfectly clear that the second part would only apply where the entry is lawful, but subsequently the trespasser insists on remaining in possession with intent thereby to intimidate, insult or annoy such person. In this case the offence was under the first part as appears from the complaint and the statement of the parties. It was no doubt mentioned that subsequently when the applicant was questioned at 8 P. M. on the same day, he adopted a threatening attitude; but

that would not convert the case into one falling under the second part of Section 441. In this connexion I am referred to a ruling reported in *Baldewa Emperor* : AIR1933 All816 in which the Hon'ble Bajpai J. had applied the second part of the section, but the facts of that case were quite dissimilar. It was found in that case that the accused, when he had entered into possession of the land, did not know that it was part of the railway property and it was only subsequently when he came to know of it that he insisted on continuing in possession. With all respect to that learned Judge, I do not agree with his observations which are to the following effect:

The prosecution case is that in spite of remonstrances, protests and warnings the accused continued to remain in possession of the property. The contention on behalf of the accused is that the second provision comes into play only when the entry of the accused in the first instance was lawful and the continuance in possession was unlawful with the intent mentioned in that provision. Ex hypothesi in the present case the entry itself was unlawful and therefore, it is submitted on behalf of the accused, the second provision of the section cannot be invoked in aid by the prosecution. A literal reading of the section might lend support to this argument, but a literal interpretation of the same would land us in an anomaly, because it would then mean that a lawful entry followed by unlawful continuance would be punishable, whereas unlawful entry followed by unlawful continuance would not be punishable.

I might point out, with great respect, that it would certainly not be punishable under this section. It might be punishable under any-other section, but not under Section 441 read with Section 448, Penal Code. The result of all this discussion is that in this case the applicant was not convicted of an offence attended by criminal force. He was only convicted of criminal trespass, which does not necessarily imply criminal force. In these circumstances, Section 522, Criminal P.C., was not applicable and the order passed under that section cannot be maintained. It has been pointed out to me that in certain revision cases this Court did not interfere on the ground that the order, though it was illegal, was equitable and just. The circumstances of present case are quite different. It is a revision against the conviction under Section 448, Penal Code, itself to which an order under Section

522 was added. I think I am (bound to set aside that order if it appears to]me that it was not legally passed. The result is that this part of the revision is allowed and the order passed by the lower Courts under Section 522, Criminal P.C., for restoration of possession is set aside.

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