

islam Khan Vs. Munir

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Court : Allahabad

Decided On : Nov-25-1977

Reported in : 1978CriLJ202

Judge : V.N. Varma, J.

Appellant : islam Khan

Respondent : Munir

Judgement :

ORDER

V.N. Varma, J.

1. This revision has arisen of a case Under Section 145, Cr.PC

2. The subject-matter of dispute in this case is a flour mill installed in a house in Mohalla Balaha Nagar P. S. Kotwali district Orai. The case originally taken by the applicant was that he was the owner of the flour mill and had been in possession of it, but, of late, the opposite party has started laying claim to it. He was also trying to dispossess him. There was thus a dispute as a result of which there was an apprehension of breach of peace. Accordingly he moved the Magistrate concerned (Sri S. B. Sri-vastava, Executive Magistrate, Orai) to take suitable action against the opposite party. The Magistrate called for a report from S.O.P.S. Kotwali. On the basis of the report submitted by S. O. Kotwal, the Magistrate

issued a notice against the parties Under Sections 107/117, Cr.PC Subsequently, the proceedings were changed and a preliminary order Under Section 145(1) Cr.PC was passed on 21-8 1&76, and the parties were called upon to put in their written statements and affidavits etc. in support of their respective claims of possession. The disputed flour mill was also attached.

3. The opposite party alleged that he was the owner of the flour mill and also that he was & tenant of the house in which the said flour mill was installed. According to him the applicant was his servant and after he had dismissed him. he started laying false claim to his flour mill.

4. In court, the applicant gave up the case that he was the owner of the flour mill, instead he alleged that he had taken Theka of the flour mill from the opposite party.

5. The parties examined witnesses and also filed papers in support of their respective claims. The learned Magistrate after going through the evidence on record came to the conclusion that the applicant had taken Theka of the flour mill from the opposite party and that he had been in actual possession of the said flour mill on the date on which it was attached and two months prior to that. He, therefore, ordered the flour mill to be released in favour of the applicant. The opposite party felt aggrieved with the order passed by the Magistrate and went up in revision to the Court of Session. The Sessions Judge reversed the order passed by the Magistrate and held that the applicant had not taken any Theka of the flour mill from the opposite party. He also held that the applicant had been the servant of the opposite party and that, in fact, he was never in possession of the flour mill in his own right on the date on which it was attached. Accordingly, he ordered that the possession of the flour mill should be made over to the opposite party. Aggrieved, the applicant has come up in revision to this Court,

6. I have heard the learned counsel for the parties at sufficient length and after doing so I do not think that this revision has any merit behind it. I find that right from the very beginning the intentions of the applicant had not been honest in this case. At first he took up the case that the flour mill belonged to him and he had installed it. He, however, gave up this case in court and took up the plea that the

flour-mill actually belonged, to the opposite party, but he had taken its Theka from him 7 or 8 years back and had paid him Rs. 2,160/- as Theka money. There is neither any document to show that the applicant had taken Theka of the flour-mill from the opposite party, nor is there any receipt to show that he had paid Rs. 2,160/- to him. The applicant may have filed some receipts- to show that he had been paying electricity bills for running the flour-mill, but those receipts are not in his name. They are in the name of one Roop Lai Gupta with whom the opposite party had entered into a partnership for running the flour-mill. It is quite possible that while working as a servant of the opposite party, the applicant laid his hand on those receipts and is now trying to take advantage of the same. Those receipts therefore, do not go to help him in any manner. The oral evidence produced by the applicant was also not such which could be implicitly relied upon. The learned Magistrate, therefore, was absolutely wrong when he held that the applicant had taken the disputed flour-mill on Theka from the opposite party. If I may say so, his finding on this aspect of the matter was absolutely perverse and the learned Sessions Judge rightly did not act upon it. On the material present on record, there can be no doubt about the fact that the flour-mill belonged to the opposite party and it was the opposite party who had been paying rent for the house in which the said flour mill was installed. The applicant was the servant of the opposite party and it was in that capacity that he had been looking after the flour-mill. In these circumstances, there could have been no question of the applicant being in possession of the flour-mill in his own right,

7. The learned counsel for the applicant contended that even if it be taken that the applicant looked after the flour-mill as the servant of the opposite party and was in possession of the same as servant he can take the aid of Section 145, Cr.PC for his possession being retained. This argument could have been a valid argument if any independent right had been created in the applicant on the basis of that possession. No right had been created in favour of the applicant in this case. As stated above, he simply looked after the flour-mill on behalf of the opposite party. The fact of the matter is that he was never in possession of the flour-mill or the building housing the flour-mill in his own right or on the basis of any right created in his favour. The learned counsel drew my attention to the ruling reported in *Ghana Nand v. State* 1976 All Cri C 140 : 1976 Cri Lj 1217. In this case the

applicant had been appointed Pujari by O.P. No. 1 and with a view to enable him to render his services as a Pujari in the temple in an effective manner he was given possession of a Kothari in the campus of the Temples. It was found that he was not just an agent of O.P. No. 1, but was living in the Kothari on his own account and in his right as a Pujari. Some legal right, therefore, stood created in him, It was in these circumstances that it was held that the applicant can take the aid of Section 145, Criminal P. C. for retaining his possession over the Kothari. In the instant case, the facts, as stated above, were quite different. The applicant simply looked after the flour-mill on behalf of the opposite party and no legal right in the flour-mill was created in him at any time. It was, therefore, not a case in which he could have taken the aid of Section 145, Cr.PC to protect his rights as a servant qua the flour-mill. The learned Sessions Judge, therefore, very rightly allowed the revision and set aside the order passed by the Magistrate.

8. In the result, I find no force in this revision and dismiss it accordingly. Stay order dated 19-7-1977 is vacated.