

Virendra Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : May-23-2002

Reported in : 2002(3)AWC2043; 2003CriLJ2709

Judge : R.K. Dash, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 145, 145(1), 146(1) and 482

Appeal No. : Crl. Misc. Application No. 4834 of 2001

Appellant : Virendra Kumar

Respondent : State of U.P. and ors.

Advocate for Def. : D.V. Jaiswal, A.G.A.

Advocate for Pet/Ap. : Ashok Nath Tripathi, Adv. and ;Arvind Kumar, (In Person)

Disposition : Criminal misc. application allowed

Judgement :

R.K. Dash, J.

1. The present case depicts a very sad story. It shows how the local police joined hands with respondent No. 3, a man with money-power and Sub-Divisional Magistrate, Nagina, district Bijnor, respondent No; 2 fell in their trap. The learned

Magistrate accepted the case of respondent No. 3 and the police report as true and in exercise of power conferred by law, initiated proceeding under Section 145, Cr. P.C., attached and appointed receiver in respect of a shop in question and consequently, dispossessed the petitioner from his rightful possession.

2. The facts of the case emerging from the materials on record may be stated thus :

'Raja Ram, the predecessor of the petitioner was a tenant in respect of a shop situated at Mahala Muglan, Kasba and P. S. Nagina, district Bijnor. Respondent No, 3 is the owner of the said shop and in order to evict the tenant therefrom, he moved the Small Cause Court by filing S.C.C. Suit No. 90 of 1985. During the pendency of the suit, Raja Ram died and the present petitioner, being his son was substituted in his place. The suit was ultimately decreed and order of eviction was passed. Feeling aggrieved by the Judgment and order ; the petitioner preferred revision bearing S.C.C. Revision No. 42 of 1994. The learned Additional District Judge, Bijnor upon hearing the parties allowed the revision by judgment and order dated 23rd July, 1999 and remanded the case to the court below for fresh decision in the light of the observation made therein. After the case was remanded, respondent No. 3 expressed that he did not wish to proceed with the case and consequently, the case was dismissed by order dated 1 st December, 1999, with costs. He had, however, the evil design to evict the petitioner by hook or by crook. As the suit for eviction was a long drawn process, he adopted a novel method and moved an application to the S.D.M., Nagina for initiating a proceeding under Section 145, Cr. P.C. Local police concealing truth submitted report recommending to initiate proceeding and to attach the shop. On the basis of the said recommendation, the Magistrate Initiated proceeding under Section 145, Cr. P.C. by order dated 29th June, 2001. On the next day, respondent No. 3 filed another application for attachment, on receipt whereof the Magistrate passed order on the same day to attach the shop in question and directed the police to appoint a third party receiver on consent of both the parties. All these happened when the civil court remained closed on account of summer vacation. After reopening of the Court, the petitioner filed Civil Suit No. 493 of 2001 for permanent injunction restraining respondent No. 3 from interfering with his possession of the

above disputed shop. The Court by order dated 2nd July, 2001, directed both the parties to maintain status-quo and not to change the nature and character of the suit property. However, on the very day, S.H.O., Nagina being armed with order of attachment passed by the Sub-Divisional Magistrate broke open the lock of the shop in question and made inventory of the movables, dispossessed the petitioner from his lawful possession and kept the shop in the custody of two persons, namely, Vinay Veer Prakash Jain and Yogesh Kumar Kalra.

3. The case of respondent No. 3 in his counter-affidavit is that, since there was talk of compromise between him and the petitioner, the tenant, he withdrew the suit and agreed to accept the rent deposited by the petitioner. Finally compromise was effected and the shop in question being very old and dilapidated and not fit for carrying out any business, the petitioner vacated the premises on accepting a sum of Rs. 50,000 and executed a memorandum of transfer of possession in presence of two witnesses. But later on, he developed ill motive to grab the property and threatened to take forcible possession for which he had no other alternative but to approach the Magistrate for initiating a proceeding under Section 145, Cr. P.C.

4. In the rejoinder-affidavit, the petitioner has refuted the assertion of respondent No. 3. Challenging the genuineness of the memorandum of transfer of possession which respondent No. 3 has sought to use as a trump card in support of his possession, he has urged that in the petition filed for initiating proceeding under Section 145, Cr. P.C. no mention was made about existence of the aforesaid document and also about the compromise to have been effected out of Court. Till passing of the preliminary order under Section 145(1) and order of attachment under Section 146, Cr. P.C., the aforesaid document was not brought on record nor any reference thereof was made by the learned Magistrate in his orders. He has emphatically urged that the document in question was fabricated in collusion with S.H.O., Nagina P. S. to concoct the present case. He denied to have entered into a compromise out of Court and vacated the house in question where he had his running business. He asserted that unable to evict him through legal process, respondent No. 3 cooked up this case in collusion with the Sub-Divisional Magistrate, Nagina and the local police and got him illegally evicted from the shop.

5. Counsel for the petitioner strenuously contended that respondent No. 3 by money power could influence the local police and with his connivance and support approached S.D.M., Nagina, with oblique motive to oust him from the shop in question which he could not have done, had he contested the suit for eviction. The petitioner fought the suit with tooth and nail for long years and after remand, respondent No, 3 knew well that the ultimate result would go against him. So, expressing his desire not to contest, he got the same dismissed and thereafter, moved S.D.M., Nagina, to initiate the present proceeding and the learned Magistrate having fallen in his trap passed the preliminary order as well as the order of attachment and ultimately dispossessed the petitioner from the shop in question. According to the counsel, law court has been used as arm to illegally dispossess the petitioner and, therefore, in order to undo the wrong caused to the petitioner, the Court should interfere with the impugned orders and quash the proceeding as well as the order of attachment and put back him in possession of the disputed shop.

6. On the date of hearing, counsel for the respondent No. 3 sent illness slip and did not appear to advance argument. On previous occasion, similar illness slip was also filed by him and the Court accepting the same adjourned the case. It has become regular practice in this Court to get the cases adjourned by filing illness slips by the counsel. The illness slip filed by respondent No. 3 was not accepted and hearing was concluded. From that date onwards till today, no petition has been filed by his counsel to permit him to argue the case. Even no written note of submission has been filed in support of his case.

7. Taking note of peculiar facts and circumstances of the case and the assertions made by the parties, it was felt necessary to depute a Commissioner for inspection of the disputed shop. Accordingly, SatendraGupta, a member of the Bar was appointed as a Commissioner and S.D.M., Nagina, was directed to inform the local police to get the shop opened if it is under lock and key of the receivers. The Commissioner visited the shop and submitted his report which forms part of the record. It appears from the report that on the date of inspection, S.D.M., Nagina, local police, petitioner and son of respondent No. 3 were present on the spot. Five locks put on the shop were broken on the direction of the Commissioner and after

inspection, new lock was put and on the consent of both parties, the key was left with one Pramod Chandra Gupta. As reported by the Commissioner the house in question consisting of three parts is well built and fit for carrying business. In the first part, certain documents, namely, medical certificate of the petitioner, licence issued by Weights and Measure Department, water tax receipt standing in the name of petitioner's mother, gas stove, one small almirah and weighing scale, etc. were kept. In the second part, ration card, L.I.C. papers of the petitioner, one legal notice sent by petitioner's mother were kept in a big almirah. In the third part, five racks, one gas cylinder and one pipe were stored.

8. On a conspectus of the report and the facts and circumstances of the case, what appears to me is that by using the Court as arm the petitioner, who was in rightful possession of the disputed premises, was got illegally evicted. The landlord, respondent No. 3, who could not be able to evict him by legal process, approached the S.D.M., Nagina, to initiate proceeding under Section 145, Cr. P.C. He also influenced the local police and obtained report to suit his purpose and ultimately, became successful in his evil design. To repeat with, the shop in question was initially let out to the petitioner's father, who occupied the same for long years and after him, the petitioner continued to possess. In order to evict the tenant, respondent No. 3 took recourse to law in 1985 and filed eviction proceeding which continued for long years. After protracted trial, the verdict went in favour of respondent No. 3 and feeling aggrieved the petitioner preferred revision. The revisional court upon hearing upset the judgment and order of the trial court and remanded the case. It also appears that respondent No. 3 did not accept the rent from the petitioner for which later had to move the Court. Thus, when the parties were indulged in legal battle, it is difficult to believe that all of a sudden they settled the dispute out of the Court amicably in such terms as alleged by respondent No. 3 which is detrimental to the interest of the petitioner. The alleged document of transfer of possession Annexure-C.A. 1 to the counter-affidavit on the basis of which respondent No. 3 claims to have got back possession was not filed before the S.D.M. when the preliminary order and order of attachment was passed. Even no reference thereof was made in the very, petition which was moved for initiation of the proceeding. No explanation has been offered why the said document, if was in existence, could not be brought to the notice of the Magistrate. To me it,

therefore, appears that the document was created subsequently when petitioner moved the court below for recalling/ cancelling the preliminary order and the order of attachment. The plea taken by respondent No. 3 that the petitioner accepted a sum of Rs. 50,000 from him and vacated the tenanted premises is too big a pill to be swallowed.

9. The local police was never impartial and all the times he tried to help respondent No. 3 in order to oust the petitioner from his tenanted premises. Since the disputed property is a shop, he should have indicated in his report as to who was in actual possession. Further, he should have briefly pointed out about the legal battle fought between the parties. Had he mentioned the true state of facts in his report, S.D.M., Nagina, would have been slow to initiate the proceeding.

10. The fact that the petitioner was all along in possession and never vacated disputed premises gains support from the Commission's report. As would appear from his report, he found certain documents belonging to the petitioner in the disputed shop. No explanation has been offered by respondent No. 3 as to how those papers could be found in the said premises when according to him, the petitioner having entered into a compromise left the premises in his possession. To my mind, the petitioner continued to possess the said premises and used the same as shop till it was attached and receiver was appointed. In my opinion, it is a fit case where the Court in order to do justice to the petitioner should come to his rescue and put him back in possession of his tenanted premises in question.

11. In the result, criminal miscellaneous application is allowed and preliminary order dated 26.9.2001 and the order of attachment dated 30.6.2001, passed by the Sub-Divisional Magistrate, Nagina in Case No. 4 of 2001 are quashed. Consequently, Sub-Divisional Magistrate, Nagina, is directed to put the petitioner back in the possession of the shop in question and Superintendent of Police, Bijnor, shall provide all protection to the petitioner so that his possession may not be disturbed.

12. In the peculiar facts and circumstances, respondent No. 3 shall pay an exemplary cost of Rs. 20,000 (twenty thousand) to the petitioner. The cost shall be paid within four weeks hence, in the event, cost is not paid, the District Magistrate,

Bijnor, on being approached by the petitioner, shall recover the same as land revenue and pay the same to him.

13. Registry is directed to send a copy of this order to the District Magistrate, Bijnor and Superintendent of Police, Bijnor and Sub-Divisional Magistrate, Nagina, for compliance.

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