

Corona Limited and ors. Vs. Krushna Chandra Patnaik

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Court : Orissa

Decided On : Jan-29-1997

Reported in : 1997CriLJ2396; 1997(I)OLR323

Judge : R.K. Dash, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 441 and 448; Indian Penal Code (Amendment) Act, 1986; Transfer of Property Act - Sections 106

Appeal No. : Criminal Misc. Case No. 1820 of 1995

Appellant : Corona Limited and ors.

Respondent : Krushna Chandra Patnaik

Advocate for Def. : P. Panda, Adv. on behalf of ;A. Deo, Adv.

Advocate for Pet/Ap. : K. Patnaik, Adv.

Disposition : Case dismissed

Judgement :

R.K. Dash, J.

1. The petitioners (hereinafter referred to as 'the accused persons') by filing the present petition under Section 482, Cr PC have invoked the inherent power of the Court to quash the proceeding in 1 CC Mo. 142 of 1993 pending in the Court of

the Sub-divisional Judicial Magistrate, Bhubaneswar. The complainant, opposite party herein, filed the aforesaid complaint alleging inter alia that he being the owner of the premises comprising a shop room at C/58, Market Building, Sahidnagar, Bhubaneswar, let out the same to the accused persons on 1-4-1987 on a monthly rent for a period of six years ending on 31-3-1993. On the expiry of the period though the tenancy automatically stood terminated, yet the complainant, in abundant caution, issued notice under Section 106 of the Transfer of Property Act calling upon the accused persons to give him vacant possession of the tenanted premises. Despite the said notice the accused persons continued to possess illegally, whereupon he issued another notice through his Advocate informing them that if they did not vacate the premises, he would be constrained to approach the Court for appropriate legal action. Even after receipt of the notice, the accused persons continued to possess as before for which the complainant filed the aforesaid complaint praying that since their unauthorised occupation of the premises amounts to 'criminal trespass' under Section 441 as substituted by Orissa Act 22 of 1986, they should be suitably punished in accordance with law.

2. Earlier to the present case, the complainant had filed ICC No. 79 of 1993 and on approach being made by the accused persons this Court quashed the said proceeding because of non-compliance of the statutory notice as provided in Orissa Act 22 of 1986. Thereupon the complainant served the statutory notice and filed the present complaint. Learned Magistrate after recording initial statement of the complainant under Section 200, Cr.PC was satisfied that there was a prima facie case under Section 448, IPC and accordingly took cognizance of the said offence. The accused persons then moved the Court below to recall the said order and the learned Magistrate upon hearing the parties came to hold that since a prima facie case has been made out against the accused persons the order of taking cognizance does not call for any interference. . . Feeling aggrieved thereby, one of the accused persons moved this Court in Criminal Misc. Case No. 312 of 19*4. Upon hearing, the Court directed the learned Magistrate to reconsider the prayer of the accused persons in the light of the submissions, documents and the decisions relied upon by them and to pass a fresh order in accordance with law. Consequent upon such order, the learned Court below heard the parties and on consideration of the acts and circumstances of the case and relying upon the

decisions cited at the Bar, held that there is sufficient ground to proceed against the accused persons for the offence under Section 448, IPC and consequently rejected the prayer. Hence the present petition.

3. Learned counsel for the accused persons contended with vehemence that since the initial entry of the accused persons to the premises in question was lawful, inasmuch as they came to possess the premises on the basis of a valid agreement as monthly tenants, any action for their eviction would lie in the Civil Court and not the Criminal Court. So, this proceeding having been Initiated with an ulterior motive to evict them from their lawful possession, should be quashed in exercise of power under Section 482, Cr.PC. Counsel further urged that M/s. Corona Limited, a registered company, was inducted as a tenant and these accused persons being the more employees are not in charge of and responsible to the company and so, in absence of specific accusation against them Initiation of the present criminal proceeding is uncalled for. On the other hand, learned counsel for the complainant submitted that after termination of the tenancy accused persons being in direct management of the company were noticed to vacate the premises, but they did not. Instead, they approached the Civil Court and filed a suit for permanent injunction to restrain the complainant from evicting them from the premises. This attempt on their part clearly indicates about their intention to retain possession unauthorisedly. Considering all these facts and circumstances, learned Magistrate was prima facie of the opinion that the act Of the accused persons squarely falls within the mischief of 'criminal trespass' defined in Orissa Act 22 of 1986 and so, the impugned order-taking cognizance of the offence under Section 448, IPC does not call for any interference.

4. Section 441, IPC which defines 'criminal trespass' has been amended by Orissa Act 22 of 1986. For better appreciation of the contentions raised at the bar, it would be useful to reproduce the said amendment as under :

'Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property;

or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence;

or having lawfully entered into or upon such property, remains there with the intention of taking unauthorised possession or making unauthorised use of such property and fails to withdraw from such property or its possession or use, when called upon to do so by that another person by notice in writing duly served on him, is said to commit criminal trespass.'

5. The aforesaid section consists of three parts. The first two parts are same and similar to that of the original section of the Penal Code. To bring the case within first part, intention to commit the offence is the paramount consideration inasmuch as the person who entered upon the property of another had the intention to commit the offence or to intimidate, insult or annoy the person in possession of the property. So far second part is concerned, it applies where one having lawfully entered into or upon the property unlawfully remains there with intent to commit offence or Intimidate, insult or annoy the person in possession of the property. The distinction between the two parts of the section as aforesaid is that in the case of the first part, the initial entry must be unauthorised with intention to commit an offence, whereas in the case of second part, the initial entry must be lawful but the continuance thereafter is unlawful with intention to commit an offence or to intimidate, insult or annoy any person. The third part with which we are concerned in the present case, says that if the person has lawfully entered into the premises and remains there with intention of (i) taking unauthorised possession or (ii) making unauthorised use of such property and (iii) fails to withdraw from such property or its possession or use when called upon to do so by notice in writing duly served on him, he is said to have committed the offence. On a scrutiny it appears that the initial entry must be legal, but continuance in the premises subsequently must be with intention of taking unauthorised possession or making unauthorised use of it and failing to withdraw in spite of notice. So in order to bring the case within the mischief of this part, it has to be established that continuance in the premises is with intention of taking unauthorised possession or making unauthorised use of it, though such intention was not there at the beginning when

the entry was made and secondly, to withdraw from the property a notice must be given before initiating the criminal action. The third part intended to apply in case of a tenant whose tenancy has been determined. The intention of the tenant when he enters into possession of the property may not be to commit an offence, but the moment his tenancy is terminated and he is called upon to give vacant possession which he does not, it is only then his continuance in the premises and use thereof becomes unauthorised. Once the possession becomes unauthorised he can no more be treated as a tenant in legal parlance. He is treated as a trespasser, since he has developed the intention to continue in the premises unauthorisedly for which he is liable for 'criminal trespass' as defined in Orissa Act 22 of 1986.

6. In the present case, the monthly tenancy of the accused persons having come to an end on 31-3-1993, they were served with notice as provided in Section 106 of the Transfer of Property Act to vacate the premises, but they did not. There upon statutory notice as required under Orissa Act 22 of 1986 was served calling upon them to vacate the premises. Instead of complying with the notice they moved the Civil Court and filed a suit to restrain the complainant permanently from evicting them from the premises in question. It appears from the record that the suit was ultimately dismissed on contest against which the accused persons have moved the appellate Court and the matter is now subjudice. This approach on the part of the accused persons is prima facie indicative of their intention to retain the possession, which is unauthorised. If, however, their claim of possession would have been otherwise than as tenants, it could have been said that it is essentially a civil matter, which could be adjudicated only by a competent Civil Court and not by Criminal Court. But since the Act complained of falls within the third part of definition of 'criminal trespass' as amended by Orissa Act 22 of 1986. Learned Magistrate is perfectly justified in taking cognizance of the offence under Section 448, IPC.

7. It was next contended that the accused persons being merely the employees of the company, viz., M/s. Corona Limited, ought not to have been arrayed as accused persons. This argument is not tenable both on fact and in law. No firm or company can act without the assistance of human agency. So those who are in charge of and responsible to the company for the conduct of its business will be

liable to be prosecuted for any offence committed by the company. In the present case though there is no clear averment in the complaint petition that the accused persons were in charge of the management of the company, but from the narration of facts it appears that it was they who have committed the alleged offence. To be more specific, it is alleged that both Manager and the District Manager entered into an agreement with the complainant to take the premises in question on monthly rent and after termination of the tenancy when request was made to give vacant possession, the District Manager and the Shop Manager abused and threatened the complainant with dire consequence. This being the factual position and more so when hearing of the case has not yet begun, it is too early to say that the employees/officials of the company should not have been arraigned as accused persons.

8. In view of discussions made above and on consideration of the facts and circumstances of the case, the impugned order of the learned Magistrate taking cognizance of the offence being impeccable cannot be interfered with.

9. Before parting with, I may observe that anything said in this order or any observation made therein is only for the limited purpose of deciding whether the impugned order calls for interference in exercise of inherent power and therefore; the same will not influence the mind of the trial Court while disposing of the case on merit.

10. In the result, the Criminal Misc. Case fails and the same is dismissed.