

Ram Nath Vs. State

Ram Nath Vs. State

SooperKanoon Citation : sooperkanoon.com/686097

Court : Delhi

Decided On : Feb-02-1982

Reported in : 21(1982)DLT227; 1982(3)DRJ159; 1982RLR318

Judge : Charanjit Talwar, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 448; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 456

Appeal No. : Civil Revision Appeal No. 389 of 1981

Appellant : Ram Nath

Respondent : State

Advocate for Pet/Ap. : D.R. Sethi, Adv

Judgement :

Charanjit Talwar, J.

(1) The petitioner herein, was convicted under Section 448 of the Indian Penal Code by a Metropolitan Magistrate by his order dated 16th October, 1980; and after affording an opportunity to him of being heard on the question of sentence he was sentenced to pay a fine of Rs. 1000.00 , in default of payment he was directed to undergo rigorous imprisonment for four months. This order was passed on 21st October 1980' By this order, the learned Magistrate directed that out of the fine if

deposited, Rs. 400.00 be paid to the complainant. He also passed the direction under Section 456 of the Code of Criminal Procedure restoring the possession of the immovable property to the complaint Naki Devi.

(2) The appeal challenging the conviction and sentence was heard by Shri S.M. Aggarwal, Additional Sessions Judge, who, while passing the order of dismissal of the appeal,

(3) Shri D.R. Sethi, Learned Counsel for the petitioner, did not seriously challenge the concurrent findings of facts arrived at by the Courts below. The arguments before me were confined only to show that the directions under Section 456 of the Code of Criminal Procedure were without jurisdiction and hence liable to be quashed. The plea is that there is no finding that the commission of the offence was attended by criminal force or show of force or by criminally intimidation to the person of the complainant and, therefore, the order under section 456 of the Code directing restoration of the property could not be passed.

(4) To appreciate the contention, proved facts which have a bearing on this contention may be noticed.

(5) Neki Devi had been residing in a kacha room in house No. 64 village Dbakka for about 25 years. The remaining portion of that house was in occupation of Ram Nath petitioner herein. She used to make a living by doing household jobs. On 26th September, 1973, before going to fetch milk; she fastened the latch of the door of the room in her possession. On her return she found all her household goods lying outside and that a lock had been put on the door of the room. On enquiries the complainant was informed by Ram Nath that he had thrown her luggage outside and had put his lock as the room belonged to him. After exchange of hot words between the two, Ram Nath asked her to leave the place.

(6) The complainant who is about 70 years old tried to persuade Ram Nath to hand back the possession of the room to her but he did not relent. A report regarding the offence was registered at Police Station Kingsway Camp on the next day.

(7) Mr. Sethi is right when he says that when the household goods of the complainant were thrown out of the room and a lock was put on its door by Ram Nath, the offence was not attended by force or show of force or by criminal intimidation qua the complainant. Criminal force, if any, at the most, so run the argument, was against the property i.e; the belongings of the complainant. The locking of the room does not attract the ingredients of Section 456 of the Code of Criminal Procedure, it is urged.

(8) However, it is apparent from the record that the retention of the room immediately after the commission of the offence was by way of show of force to and intimidation of the complainant. The defense of the petitioner that the complainant had voluntarily handed over the possession and it was, thereafter that he had locked the room is belied by the material on record and has been rejected by the Courts below. I have no reason to interfere with that finding.

(9) From the judgments of the Courts below one fact is very clear that on her return the complainant persuaded Ram Nath to restore the possession of the room to her. PW4 Vimal Dev Sharma deposed that Niki Devi was employed to clean utensils at his house for the last about 28-29 years. He knew where she lived. On 26th September, 1973, at about 7.00 P.M. he had gone to that house to call her as his daughter had come on a visit and the complainant was required. He saw that Niki Devi's clothes and other belongings had been thrown out of the room and that the room had been locked from outside. He also heard exchange of hot words between the accused and the complainant. This witness on this aspect, it appears from the judgments of the Courts below, was not even cross-examined.

(10) It is no doubt true that the 'force' that is contemplated by the provisions of Section 456 (Section 522 of the Old Code) is the force as applied to a human body as envisaged by provisions of Section 349 and 350 of the Indian Penal Code. See *Bhani and Others v. Narain Singh*, Air 1940 Laho 84 ; *Narain Singh and another v. Panna Lal* 1940 Laho 460 ; *Gordhan Dass v. Slate and Others*, , D.K. Aswatha *Narayan Gupta v. J. Muneppa and Others*, Air 1943 Mad 257

(11) There is another rule of law which is now settled and that is if the accused takes possession of an immovable property in the absence of the person who was

in possession of it and on return of that person, uses criminal force, Criminal intimidation or show of force, when a protest is made to him against the taking of possession of the property, the provisions of section 522 (Section 456 of the new code) are attracted.) (See Rajbanshi Thakur v. Chandey Jha and others, : AIR1951 Pat307 and Mahabir efc.v. Rex Air 1949 All 228.

(12) In the present case from the testimony of the complainant as well as of Vimal Dev Sharma (Public Witness 4) what emerges on this aspect is that on the return of the complainant when she found that her belongings had been thrown out of the room and the room had been locked from outside, on enquiries Ram Nath told here that he had done so. Her protest and persuasion to him were of no avail. She was told to 'go away'. The exchange of hot words, as deposed to by Vimal Dev Sharma, corroborate the testimony of the complainant that she had tried not oaly to persuade the accused but had protested againit his misdeed. However, threatened to kill her. The fact that she protested, immediately on her return to the accused is established. It is not a case where the aggrieved party walked away without protesting or silently suffered the trespass. In my view in a situation like this it is inconceivable that an eld lady who had lost her abode would not protest. There is unim. peacthable evidence that she had done so and it followed exchange of hot words between the two. The possession admittedly was not handed over back to her even after the protest and exchange of hot words. She could not enler her room because the door had been locked from outside. The comulative effect of these acts on the part of the accused proves that she was prevented to enter her property at the show of force. She is a widow of 70 years; her action in not breaking open tJie lock shows her mental state and the danger in her mind to her person. The exchange of hot words and the accused asking her to go away or else she would be cut to pieces, proves the danger to her person.'

(13) In view of my above discussion there is no force in this petition. The same is hereby dismissed.

(14) The stay order granted on 18th December, 1981 shall stand vacated forthwith.

