

Kishore Kumar and ors. Vs. the State

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Court : Delhi

Decided On : Dec-03-1982

Reported in : 1983(1)Crimes940; 23(1983)DLT121

Judge : M.L. Jain, J.

Acts : [Indian Penal code, 1860](#) - Sections 454

Appeal No. : Criminal Miscellaneous (Main) Appeal No. 461 of 1982

Appellant : Kishore Kumar and ors.

Respondent : The State

Advocate for Pet/Ap. : D.C. Mathur,; B.G. Singh,; S.T. Singh,;

Judgement :

M.L. Jain, J.

(1) This order will dispose of two petitions Cr. M. (M) 100/82 and 461/82.

(2) Kasturi Lal Lamba and Tirath Dass, deceased, who were doing some business collectively in Karachi came to Delhi after partition. They were allotted an evacuee property Nos. 1467, 1546, 1579 and 1585, situated on Church Road, Kashmere Gate, Delhi. They started the Mewa Biscuit Cooperative Industrial Society Ltd. therein. Some portion of property No. 1546 the Society rented out to Laxmi

Commercial Bank, and the remaining portion was rented out to Hindustan Times limited for use as a godown. Upon proceedings instituted by one Mst. Sultan Bi, the said property was released to her on 7-12-1960. She entered, into an agreement on 16-10-1967 with Tirath Dass and Kasturi Lal Lamba agreeing to sell the said lot of properties to them for one lakh of rupees. The money was paid by their partnership firm Mewa Hotel, Ghandni Chowk, another venture started by them on 13-7-1960. One sale deed was executed in the name of Kasturi Lal Lamba in respect of the property in dispute No. 1546, while the other three plots were sold in the name of the deceased Tirath Dass in the year 1968. The Mewa Hotel partnership appears to have been dissolved on 16-11-1970. On 20-12-1971 Tirath Dass died. On 31-12-1971, the Society was dissolved and it was resolved that property No. 1546 be handed over to Kasturilal Lamba and the other plots to the heirs of Tirath Dass. The tenants Laxmi Commercial Bank and the Hindustan Times were told that in future they should pay the rent to Kasturilal Lamba. The Society ceased to function from 7-1-1972. The Hindustan Times appeared to have vacated the premises on 1-9-1972. In June, 1977, he discovered that the portion of his property vacated by the Hindustan Times had come to be occupied by the Prakash Roadlines P. Ltd. In reply to his notice of 26-6-1977, the Roadlines replied that they were put in possession since 29-1-1977 by Savitri Devi, Shanta Devi and Narinder Kumar. On 27-4-1978 Lamba filed a suit No. 547/78 in this court against the Roadlines and the widow Savitri Devi and children of the deceased Tirath Dass; Shanti Devi, Narinder Kumar and Kishore Kumar. In the written statement Savitri Devi pleaded inter alia that an agreement was executed on 27-12-1972 between Kasturilal Lamba and her that he had a right to enjoy half of the income derived from the properties and under the agreement she had the right to let it out, and did lease the premises to Prakash Roadlines P. Ltd. Issues in the said suit were framed on 22-11-1978, one of which pertained to this agreement. The original agreement is written on two-rupee stamp paper and runs into three pages stamped by the Notary Public. On the first page of this agreement, there is an endorsement of 15-10-1979 by Lamba's counsel 'admitted subject to objection'. The second page bears an endorsement of the same date, 'denied', signed by Lamba himself. The third and the last page contains an endorsement by the counsel without any date which reads 'Signature admitted

subject to the objection in the replication. The document is inadmissible for want of stamp registration, etc'. This manner of admission and/or denial is unusual and the idea seems to be to suggest that the second page which shows that the property was in joint enjoyment has been replaced and to which his advocate did not append his signatures and that certainly is a matter of detailed examination possibly only in the civil suit.

(3) On 27-10-1980 Lamba wrote a letter to the Home Minister that when the Hindustan Times vacated the premises, he put up a board on the premises that the property belongs to him and that he was going to raise construction thereupon, but he got an attack of paralysis and was confined to bed. During his illness, he was informed that Savitri Devi who is the owner of the adjoining property in collusion with her sons opened the locks, removed the board and occupied the premises. The matter was reported to the Kashmere Gate Police Station, but no action was taken by the police so far. After some time he came to know that Prakash Roadlines managed by H.S. Manchanda occupied the premises. This letter was forwarded by the Personal Secretary of the Minister to Dcp, A.K. Singh. It in its turn came for necessary action to the S.H.O. Kashmere Gate. An Fir was registered on 20-11-1980 under Section 448 Gr.P.G. But after investigation the police put up a challan on 15-3-1981 that the present petitioners committed trespass on 9-6-1975 punishable under Sections 454, 455 and 120B Indian Penal Code .

(4) The accused made two applications on 12-2-1982 under Section 309, Cr. P.C. in the court of the Metropolitan Magistrate for stay of the criminal proceedings. The learned Metropolitan Magistrate by his order dated 20-2-1982 declined the request. Hence, these petitions, in which not only a request for stay of prosecution is made, but it is also prayed that the proceedings pending in the Court be quashed because the matter was essentially a civil matter and was not a criminal matter. It was a prosecution mala fide.

(5) I have heard arguments at length. The first thing that strikes one's attention is that the petitioner was dispossessed in January, 1977. No date or details of the offence were mentioned in the representation to the Home Minister or in the Fir

made in 1980. It was only during investigation that it was disclosed that the trespass took place on 9-6-1975 and in a violent manner. The two witnesses examined by the police, Tilak Raj, of the Society and Swami Dass of the Laxrni Commercial Bank have stated that the board put up by the complainant was removed at the instance of the accused Manchanda, Savitri Devi and a few other persons who had come armed with 'Hathodi' and when witnesses Inder Singh and Madan Lal who were connected with the complainant intervened, they were threatened and asked to leave. It was strenuously urged that all this evidence is mala fide and manipulated in order to covert a civil dispute into a criminal one so as to bring pressure upon the accused to vacate the premises. It was, therefore, submitted that the criminal proceedings be quashed or in the alternative they be stayed.

(6) As regards the matter of stay, I am inclined to accept the approach of the learned Magistrate and will not like to reverse him simply because identical facts will be tried in both the proceedings, reason being that the objects and approaches in the two types of proceedings are different and criminal proceedings need an early disposal.

(7) The next question is whether to allow the criminal case to continue will not amount to abuse of the process of the court. From the above narration of facts, it appears to me clearly that the matter was essentially and primarily a dispute of civil nature in which on the basis of an agreement between the parties the accused claimed that the complainant was only entitled to share half of the profits of the property and no more. Offences under Section 454 and 455 are cases of aggravated forms of criminal trespass and an entry in or upon a property in order to be criminal must be shown to have been made with the intent to commit some offence or to insult or to annoy or to intimidate the complainant. It is necessary to show that causing of such annoyance, intimidation or insult was the aim of the entry. The court has to consider all the relevant circumstances including the presence of knowledge in the mind of the accused that the natural consequences of the entry would be annoyance, intimidation or insult and that it was his dominant intention, vide *Mathri v. State of Punjab*, : [1964]5SCR916 . In this case taking all the allegations to be true, it cannot be said by any stretch of imagination that the

accused had any such knowledge or that their dominant aim which prompted the entry was to cause annoyance, intimidation or insult or to commit an offence. Trespass in this case is alleged to have taken place in June, 1975. The civil suit was Filed three years after in 1978. No criminal complaint was filed nor any higher authority approached until the year 1980. Even there, it began in a simple trespass as the complainant made to the Home Minister will show. But by the time the case was challaned, it took the shape of house breaking with preparation of causing fear of hurt, etc. This sequence of events clearly establishes that a Civil dispute was being converted into a criminal one of a very high type. That certainly is an abuse of the process of the court and the proceedings deserve to be quashed. Such was the view taken by the Supreme Court in Hari Prasad Chamaria v. Bishnu Kumar Surekha and others, : 1974 CriLJ352 .

(8) I, thereforee, accept these petitions and quash the criminal proceedings in question.

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