

V. Bhagat Vs. D. Bhagat

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Court : Delhi

Decided On : Feb-01-1996

Reported in : 1996IAD(Delhi)699; 61(1996)DLT747; 1996(36)DRJ457; 1994RLR34

Judge : Jaspal Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 448; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 200

Appeal No. : Criminal Revision Appeal No. 109 of 1994

Appellant : V. Bhagat

Respondent : D. Bhagat

Advocate for Pet/Ap. : B.S.C. Singh and; Rakesh Sahni, Advs

Judgement :

Jaspal Singh, J.

(1) The petitioner, Mr.Bhagat, is a lawyer of long standing. The respondent is a vicefpresident in the Indian Tourism and Development Corporation. They fought in marriage, and for so long and with such venom and bitterness that the Supreme Court had to intervene and dissolve their marriage. They are now fighting out of marriage. The battle now centres around the premises which once happened to be

their matrimonial home. Despite the divorce, the respondent has not walked out of it, nor, it appears, she intends to. Not, at least, till she is compelled to. The petitioner seems equally determined to make her go. The battle-lines are thus clearly drawn and once again the courts are witness to the clash of the two titans with both sides betraying no signs of battle weariness.

(2) Soon after the dissolution of the marriage, the petitioner instituted a criminal complaint against the respondent under section 448 of the Indian Penal Code. To his chagrin, if I may say so, the learned Metropolitan Magistrate holding that there was no sufficient ground to proceed against the respondent dismissed the complaint under section 203 of the Code of Criminal Procedure. Hence this criminal revision.

(3) What is the material on the record? Let me portray:

(4) First, the complaint. It alleges that after the marriage in the year 1966 the complainant brought the accused into the matrimonial home at 32 Nizamuddin East, New Delhi on account of her being his wife and when on November 11, 1993 the marriage was dissolved, she became a trespasser and though she was served with a legal notice dated November 30, 1993 requiring her to remove herself and her belongings, it was to no effect and that whereas the accused continues to use the former matrimonial home as her residence and to enjoy the facilities available therein including the kitchen, he is not left with even a bedroom or some place to rest or some space for his legal practice. The complaint says that the accused is thus deliberately and intentionally insulting and annoying the complainant with her acts of continuing trespass.

(5) Besides the complaint, we have also on the record the statement of the complainant wherein he repeats all the material facts surfacing in the complaint and alleges that the 'accused is trespassing and causing serious annoyance and insult' to him and that his peace of mind and ability to work 'is seriously affected by the trespassing of the accused.'

(6) The learned Metropolitan Magistrate while laying emphasis on the fact that a trespass is 'not criminal unless it is done with intention to commit an offence or to

intimidate, insult, or annoyance (sic) of any person in possession of the property', proceeded to observe:

'AFTER the dissolution of marriage vide judgment dated 19.11.1993, merely because the marriage has been dissolved and legal notice (sic.) Ext. C2 and Ext. C3 have been given to the wife (sic.) by the complainant.(sic.) she cannot be said to have committed any criminal trespass into the house where she is residing prior to the dissolution of marriage. The element of criminal intention is missing. The dispute between the complainant and his wife (sic)) is purely of a civil nature and this case does not fall under the definition of criminal trespass under section 441 Cr.P.C.(sic.)'

(7) To my pleasant surprise Mr.Bhagat, and so also Bawa Shiv Charan Singh who represented the respondent were brief though incisive. While Mr.Bhagat, placing reliance on Chandra Deo Singh v. Prokosh Chandra Bone : [1964]1SCR639 , submitted that there was more than sufficient material on the record to proceed against the respondent Bawa Shiv Charan Singh least full throated support to the impugned order. His contention was that intention to commit an offence or to intimidate, insult or annoy being an essential ingredient and that being missing from the statement of the petitioner, mere occupation of the respondent even if illegal, would not amount to criminal trespass. In support he relied upon Kanwal Sood v. Nawal Kishore : 1983 CriLJ173 .

(8) In Kanwal Sood v. Nawal Kishore (supra) one Mr. R.C.Sood had executed a gift deed relating to premises in dispute in favor of Shri Anand Mayee Sangh. Under the terms of the gift deed Mr. Sood was entitled to remain in occupation of the premises during his life time and could as well grant leave and license to another. He allowed the appellant to occupy the premises. She, however, did not vacate

'AT the most, it can be said that after the death of Shri Sood the leave and license granted by Shri Sood came to an end and if she stayed in the premises after the death of Shri Sood, her possession may be that of a trespasser but every trespass does not amount to criminal trespass within the meaning of section 441 of the Indian Penal Code. In order to satisfy the condition of Section 441 it must be

established that the appellant entered in possession over the premises with intent to commit an offence. A bare perusal of the complaint filed by respondent No.1 makes it abundantly clear that there is absolutely no allegation about the intention of the appellant to commit any offence or to intimidate, insult or annoy any person in possession.'

THE appellant may be fondly thinking that she had a right to occupy the premises even after the death of Shri R.C.Sood. If a suit for eviction is filed in the Civil Court she might be in a position to vindicate her right and justify her possession. This is essentially a civil matter which could be properly adjudicated upon by a competent Civil Court. To initiate criminal proceedings in the circumstances appears to be only an abuse of the process of the Court.'

(9) Undoubtedly, the court has to be satisfied that entry on the property was with intent to annoy, intimidate or insult and that the said intention was the aim of the entry. Showing merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult and that this likely consequence was known to the person entering, would not be sufficient. But then, in the case before me the complaint filed by the petitioner fully meets the above noted requirement. Reference, in this connection, may specifically be made to sub-para (d) and (e) of paragraph 5 and to paragraph 7 of the complaint which run as under:

'D)the accused continues to use the facilities in the house and in the kitchen at the cost of the complainant notwithstanding the divorce granted by the Supreme Court, and the notice sent to her - the accused is deliberately trespassing on the said premises to cause annoyance and insult to the complainant.

E)the accused continues to use the services of the servant employed by the complainant without any authority to do so while trespassing on the house as aforesaid, and even when the complainant needs the servant's services; this is deliberately and intentionally done by the accused to cause insult and annoyance to the complainant.

7.The accused is deliberately and intentionally continuing to trespass in the said house with the intention of annoying and insulting the complainant as aforesaid.

The accused is guilty of the offence of house trespass which is continuing day by day from 19.11.1993 onwards. The accused is the Vice- President of the I.T.D.C., and she is fully aware of her conduct and the consequences thereof.

(10) It was contended by Bawa Shiv Charan Singh that it would not be permissible to look into the complaint and that I must confine myself to the statement of the petitioner. However, I find myself unable to subscribe to this view. It is not even necessary that an inquiry be held but where the Magistrate does hold the inquiry under sub-section (1) of section 202 of the Code of Criminal Procedure and takes evidence under sub-section (2) of section 202, in that case he has to decide whether or not to proceed only with reference to the intrinsic quality of the statements before him which would surely, if I may say so, mean the complaint itself, the statement on oath made by the complainant and the statements made before him by other persons examined at the instance of the complainant. In *Nagawwa v. Veeranna* : 1976 CriLJ1533 , the apex Court observed:

'IT is well settled by a long catena of decisions of this Court that at the stage of issuing process the Magistrate is mainly concerned with the allegations made in the complaint or the evidence led in support of the same and he is only to be prima facie satisfied whether there are sufficient grounds for proceedings against the accused.'

(11) In the same very judgment it was observed that an order of the Magistrate issuing process against the accused can be justifiably quashed or set aside in the following cases.

'(1) Where the allegations made in the complaint or the statement of the witnesses recorded in support of the same taken at their face value make out absolutely no case against the accused or the complaint does not disclose the essential ingredients of an offence which is alleged against the accused. (2) where the allegations made in the complaint are potently absurd and inherently improbable so that no prudent person can ever reach a conclusion that there is sufficient ground for proceeding against the accused. (3) Where the discretion exercised by the Magistrate in issuing process is capricious and arbitrary having been based either on no evidence or on materials which are wholly irrelevant or inadmissible;

and (4) where the complaint suffers from fundamental legal defects, such as want of sanction, or absence of a complaint by legally competent authority and the like.'

(12) It would thus be apparent that to arrive at the requisite satisfaction, the complaint itself can and should also be gone into. Incidentally in *Kanwal Sood v. Nawal Kishore* (supra) also which was referred to and relied upon by *Bawa Shiv Charan Singh*, the Supreme Court took notice of the contents of the complaint even after full fledged trial, to know as to whether the ingredients of the offence were spelt out or not.

(13) It was also contended on behalf of the respondent that the material on the record was not 'sufficient' for conviction and that as such the learned Magistrate was justified in refusing to proceed against the respondent. I think this is not the correct approach. 'Sufficient ground' has been construed to mean the satisfaction that a prima facie case is made out for proceeding against the accused (See *Nagawwa v. Veeranna* : 1976 CriLJ1533), and not whether there was sufficient ground for conviction (See *R.G.Ruia v. State of Bombay* : 1958 CriLJ244 ; *Chandra Deo Singh Prakash Chandra Base* : [1964]1SCR639). The scheme of sections 200 to 203 of the Code of Criminal Procedure does not envisage a regular trial to take place. The Magistrate is not even required to weigh the evidence meticulously as if he were the trial court. If he does so, he oversteps the limits of his discretion. The standard is not even the same as the one which is to be kept in view at the stage of framing charges. And, once all this kept in view and in that light the complaint and the statement of the petitioner are weighed, the sufficiency to proceed against the respondent would be clearly borne out.

(14) *Bawa Shiv Charan Singh* further submitted that the respondent was in possession of the premises in her own right and independent of the petitioner.

(15) As already noticed, the test at this stage is whether there is sufficient ground for proceeding. The question whether the person charged of an offence in the complaint, might have a defense, has to be left to be decided by the appropriate forum at the appropriate stage. In other words, where there is prima facie evidence, the issuance of the process cannot be refused on the ground that the person to be proceeded against might have a defense (See: *Chandra Deo Singh*

v. Prokash Chandra Base : [1964]1SCR639)

(16) For the reasons aforesaid the order of dismissal passed by the learned Metropolitan Magistrate cannot be sustained. Consequently, the impugned order is set aside. The learned Metropolitan Magistrate is directed to issue the process and proceed with the case.

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