

N.C. Singhal (Dr.) Vs. State

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Court : Delhi

Decided On : May-18-1998

Reported in : 1998CriLJ3568; 75(1998)DLT80

Judge : Dalveer Bhandari, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 380, 427 and 448

Appeal No. : Criminal Misc.(Main) No. 951 of 1998

Appellant : N.C. Singhal (Dr.)

Respondent : State

Advocate for Def. : Mr. Pawan Bahl, Adv.

Advocate for Pet/Ap. : Ms. Neelam Grover, Adv

Judgement :

ORDER

Dalveer Bhandari, J.

1. The petitioner has filed this petition under Section 482 of the Code of Criminal Procedure for setting aside the orders passed by the learned Metropolitan Magistrate, Delhi dated 30.3.1991 and that of the learned Additional Session Judge dated 3.1.1998.

Brief facts necessary to decide this petition are recapitulated as under:-

2. Admittedly, the petitioner was a licensee of a chamber measuring 8' x 8', for carrying on medical practice/consultation from 1 PM to 3 PM on Tuesday, Thursday and Saturday. Even according to the license deed, the licensor had a right to allow any other person to carry on medical practice at any time, in that chamber. It is also mentioned in the license deed that the chamber shall be used for giving medical consultation/advice to the patients visiting the said doctor and for no other purpose.

3. It was specifically incorporated in the license deed that the license is purely temporary and the licensor has absolute right to terminate the permission/license by giving licensee a written notice of one month. Licensee was admittedly terminated by written notice dated 23.9.1985.

4. The petitioner after termination of his license filed a suit for injunction and though the injunction was initially granted but the same was vacated on 28.1.1986. Instead of filing any appeal or revision against that order, the petitioner filed another suit on the same ground against the same parties which was dismissed on 29.11.1986.

5. It may be pertinent to mention that the petitioner had also filed a complaint to the police on 5.2.1986 alleging that on the same date, his chamber was demolished. There were personal belongings, apparatus and books in the chamber which were missing. The case proceedings were initiated on the complaint of the petitioner and four other doctors. The learned Metropolitan Magistrate in her order dated 30.3.1991 had mentioned that except bald allegations that the apparatus and books of the complainants were found missing, there was no evidence to show that the accused had committed theft. The learned Metropolitan Magistrate further mentioned on the basis of record that no charge can be framed under section 448/427/380 IPC against the accused persons and they were accordingly discharged.

6. The petitioner aggrieved by that judgment filed a Criminal Revision before the learned Additional Sessions Judge which was dismissed by a detailed order.

7. The learned Additional Sessions Judge mentioned that the doctors were only entitled to the use of the chamber for limited number of hours on certain days in the week and that too for a limited purpose of providing medical consultation. For the rest of the period, it was the licensor who could put any other person in the said chamber. So, the chamber cannot be said to be in exclusive possession of the doctors. In fact, the actual physical possession of the chamber in question always remained with the licensor. The licensor alone had the lock and key of the Chamber.

Admittedly, the license was terminated on 23.9.1998 by a written notice. The learned Additional Sessions Judges held that the petitioner merely came and visited the chamber at a stipulated time on stipulated days. The chamber was shared by other doctors and the lawful possession of the chamber always remained with the licensor who alone used to lock the main front door. The injunction was rightly vacated. The petitioner filed the second suit in which also the injunction application was dismissed on 20th November, 1986.

8. The learned Additional Sessions Judge affirmed the judgment of the learned Metropolitan Magistrate with regard to the grievance of theft also. The learned Additional Sessions Judge held that the allegations with regard to theft are too vague in nature inasmuch as there is no description of the apparatus, books and other equipments. The learned Additional Sessions Judge further held that keeping of equipment by the petitioner is also belied from the fact that the petitioner was not in exclusive possession of the chamber. The chamber was being used by different doctors at different hours on different days. The learned Additional Sessions Judge held that keeping of apparatus by the petitioner cannot be believed because the chamber was never in exclusive possession of the petitioner. The petitioner was not even permitted to install a cooler or heater. Even the furniture and fittings were provided by the licensor which was meant for use of all the visiting doctors.

9. The learned Additional Sessions Judge held that the Revision Petition itself was not maintainable as the same was filed by a private party and not by the State. He also placed reliance on *Thakur Ram Vs . State of Bihar : 1966 CriLJ700* and

Pratap Vs . State of U.P. : 1973 CriLJ565 . It is the State who is the master of litigation in criminal cases. The criminal law cannot be taken as an instrument of taking private vengeance by an aggrieved party. It is the State who is custodian of the social interests of the community at large.

10. I have heard learned counsel for the parties and carefully perused the documents placed on record. I do not propose to decide the question whether this petition under Section 482 Cr.P.C. is maintainable against the order of the learned Additional Sessions Judge or not, because even on merit, I find no substance in the petition.

11. In view of the aforesaid reasons, it is conclusively established that the licensor always had the actual physical possession of the chamber in question. The petitioner was only given permission to visit the chamber for a few hours on a certain dates in a week. The lock and key also always remained with the licensor and the licensor had a right to give the chamber for the use of other doctors on other days. The petitioner was not even permitted to install a cooler or heater or any furniture in that chamber. The license of the petitioner was revoked by a written notice and thereafter the chamber was demolished. The learned courts below have rightly reacted to the conclusion that there is no substance in the allegations of theft leveled by the petitioner. No description of equipments or books was given. The learned courts below have correctly arrived at the conclusion that the allegations of theft of books, or equipments from the chamber also could not be believed because the said chamber was never in actual physical possession of the petitioner.

12. On consideration of the totality of facts and circumstances of this case, no infirmity can be found in the findings of the courts below. This petition being devoid of any merits is accordingly dismissed.