

Chellappan Vs. Sivanandan and ors.

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Court : Kerala

Decided On : Nov-24-1970

Reported in : 1972CriLJ443

Judge : Sadasivan, J.

Appellant : Chellappan

Respondent : Sivanandan and ors.

Judgement :

ORDER

Sadasivan, J.

1. The revision petitioner moved the Sub-Magistrate, Mavelikara by a petition under Section 522 of the Code of Criminal Procedure for restoration of the property which was criminally trespassed upon by the counter-petitioners, six in number. The property in question was a chira reclaimed and enjoyed by the complainant; but on 4-3-69 at about 5 p. m. taking advantage of his absence from the place the accused trespassed into the chira and erected huts thereon. Two new huts were erected, one by accused 3 and 4 and the other by accused 5 and 6. Accused numbers 1 and 2 trespassed into the hut which was already there. On his complaint a case was registered by the Mavelikara police and the accused were charge sheeted before the Magistrate in C. C. 540/69. That ended in the conviction of the accused under Sections 447 and 448 I. P. C. The conviction was

on 5-12-69. Thereafter on 3-1-1970 the present petition under Section 522 was presented before the Magistrate for restoration. The learned Magistrate has refused the complainant's prayer on the ground that since the alleged trespass was not attended with Criminal force or show of force Section 522 is not attracted, I think the view taken by the learned Magistrate is correct.

2. The trespass and the dispossession were admittedly peaceful and in the absence of the complainant from the place. In convicting the accused the learned Magistrate has not found that any Criminal force was used in the commission of the trespass,

Where there is no finding or allegation that criminal force has been used in the commission of Criminal trespass, an order under Section 522, restoring the possession of immovable property to the complainant cannot legally be passed. (Vide (1919) 20 Cr LJ 488 (Punj).).

Learned counsel relying on *Lalit Mohan Pal v. State* AIR 1952 Assam 107 and *Gadadhar Saharia v. Ambika Kumar* AIR 1953 Assam 34 argued that even though at the time of Commission of the trespass there was no occasion for the use of Criminal force, it is enough if force is applied in retaining the possession. In the first mentioned case (AIR 1952 Assam 107) the Assam High Court has observed:

The retention of the possession by a Criminal trespasser by show of Criminal force amounts to factual dispossession in the eye of law for which a relief under Section 522 can be given when the Court thinks it justified.

And in the case second cited (AIR 1953 Assam 34), the observation of the Court was:

For the restoration of possession to the dispossessed person under Section 522, Criminal P. C., it is necessary that the offence should be attended by force or show of force or Criminal intimidation and the dispossession too should have been caused by such force.

A entered on the land of B when B was absent. On receiving the information about A's trespass, B went to the land next day and found A ploughing the land. B

protested but was threatened by A and was prevented from entering the land. On complaint by B. A was convicted under Section 447, Penal Code and order of restoration of possession under Section 522 was passed in B's favour.

Held that in the circumstances of this case the Criminal trespass was completed and the dispossession had taken place on the next day when B was prevented from entering the land by show of force. The order of restoration under Section 522 Criminal P. C. was therefore justified.

But in the present case there was no occasion at all for the use of force or show of force either at the time of actual trespass or in retaining the possession. The trespass as already stated was completed in the absence of the complainant. Even after the arrival of the complainant at the scene there was no occasion for any application of force or show of force as he did not go and protest. As a matter of fact the complainant had no occasion to meet any of the accused face to face and question them about the trespass. What he did on hearing about the trespass was to rush up to the police and later to the Court. That being the position neither of the rulings cited above can apply to the present case. The section itself is clear that restoration can be had only when the trespass and dispossession were attended by Criminal force or show of force. The section reads:

522 (1) Whenever a person is convicted of an offence attended by Criminal force or show of force or by Criminal intimidation and it appears to the Court that by such force or show of force or criminal intimidation any person has been dispossessed of any immovable property the Court may, if it thinks fit, when convicting such person or at any time within one month from the date of the conviction order the person dispossessed to be restored to the possession of the same.

(In the present case, of course, the petition was filed within one month of the date of conviction). On a plain reading of the section it is obvious that the offence of which the accused is convicted should be one attended by Criminal force or show of force or Criminal intimidation. This important element is lacking in the present case.

It is manifest that on the words of Section 522 it comes into operation only if an accused is convicted of an offence attended by Criminal force or show of force or by Criminal intimidation. Criminal force has been defined in Section 350 of the Penal Code and it is obvious that such force must necessarily be directed towards a person and not towards an inanimate object, Criminal intimidation has been defined in Section 503, and it is quite clear that this offence also must be committed against a person.

If the accused takes possession of an immovable property in the absence of the person in possession and if the accused uses Criminal force, criminal intimidation or show of force at the time when the person in possession comes to protest for the first time, the provisions of Section 522 will become attracted.

Where all that was said in the evidence was that the accused took a defiant attitude when the owner (complainant) came to protest for the first time and referred the complainant to Court and there was no evidence of the presence of weapons with the accused nor was there any evidence to show that the complainant was put to fear of physical hurt:

Held that Section 522 was not attracted and it was not permissible for the court to order restoration when convicting the accused under Section 456 of the Penal Code.' (vide *Jagadish Revani v. Dr. Rajendra Nath Sarkar* 1964 (2) Cr. LJ 710).

In the present case also the dispossession was completed in the absence of the complainant. The question of using force in carrying out the trespass, therefore, did not arise. Even subsequent to that when the complainant came to know of the trespass he did not go and protest to the accused. All that he did was to complain to the authorities and not even going to the spot just to see and satisfy for himself as to the nature of the trespass committed. In these circumstances it would be doing violence to the section if restoration is ordered. The court below is well within its power in having refused the prayer. This revision petition is, therefore, dismissed.