

Alikunju Vs. Alikunju and ors.

Alikunju Vs. Alikunju and ors.

SooperKanoon Citation : sooperkanoon.com/724233

Court : Kerala

Decided On : Feb-19-1960

Reported in : AIR1960Ker343; 1960CriLJ1462

Judge : Anna Chandy, J.

Acts : [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 523; ;Indian Penal Code (IPC) - Sections 448 and 454

Appeal No. : Criminal Revn. Petn. No. 179 of 1959

Appellant : Alikunju

Respondent : Alikunju and ors.

Advocate for Def. : S. Nilakanta Iyer and; K. Parukutty Amma, Advs.

Advocate for Pet/Ap. : T.K. Narayana Pillai and; D. Narayanan Potti, Advs.

Judgement :

ORDER

Anna Chandy, J.

1. The Kundara Police Inspector having registered Crime No. 73 of 1959 under Sections 448, 454 and 505(4) (sic) of the Indian Penal Code against three accused, arrested accused 1 and 3 and took them to the Police Station after

locking the house with the key produced by the accused. The accused filed a petition for the return of the key they produced before the police which was allowed by the Sub-Divisional Magistrate, Quilon. Aggrieved by this order the first informant has come up in revision.

2. A few facts may be referred to in the disposal of this Revision Petition. The first informant assigned the house alleged to have been trespassed upon and the compound in which it is situated to his daughter for her streedhanam and she and her husband were in occupation of the house for about 10 months after their marriage. After that her husband left the place in search of a job and did not return, Thereafter the house was occupied by the daughter and the petitioner's wife. Occasionally they used to go and live with the petitioner in his house,

On 3-5-1959 they locked up the house and went over to the petitioner's house and when they returned on the 6th they found the house broken into and respondents 1 to 3 (accused 1 to 3 in the First Information Report) in occupation. Accused 1 is the uncle of the petitioner's daughter's husband and accused 3 is his wife. When the daughter and her mother remonstrated, the accused threatened to use criminal force. On those allegations the petitioner lodged a complaint with the Kundara Police on 9-5-1959 at 10-15 A.M. The police after recording the statement and registering the case proceeded to the house. There they found accused 1 and 3 in occupation of the house. Sundry articles belonging to them were also in the house.

The petitioner produced a key alleging that to be the key with which his daughter had locked up the house when she left it three days back, but it was found that it did not fit the lock. The accused then produced another key which fitted. The police prepared a mahazar which describes the two keys and the lock and notes the existence of signs to indicate that the lock then found was newly fixed to the door and that the key produced by the accused was newly made. They then straightway arrested accused 1 and 3, locked up the house and produced the accused before court the next day retaining the key in their possession.

3. The accused applied for bail the same day alleging that they were in occupation of the house for some time past and that the case taken up with the sole object of

forcibly dispossessing them. They were released on interim bail and the order was finalised on the 13th. On the 13th the 1st accused filed a petition reaffirming the plea that he and his wife were in actual possession of the house and were dispossessed and the keys taken from them. They asserted that the food which was being cooked at the time of their arrest can be found in that condition if a proper Mahazar is prepared. They prayed that an officer of court may be deputed to prepare a mahazar and also that the keys taken from them may be returned to them.

The same day the court passed an order directing the Circle Inspector to get a mahazar of the house prepared. As the mahazar was not prepared till the 22nd of the month the accused filed a fresh petition for the same reliefs prayed for in the earlier petition. Accordingly the mahazar was prepared by the police noting the existence of half cooked rice in the kitchen and also several other household articles. After the mahazar was prepared on the 23rd the 1st accused again moved the court by a petition alleging that he and his family were suffering much inconvenience because their house was locked up and praying that the keys of the house taken from his possession may be entrusted¹ to him on kychit to be produced as and when required by the court. On the 30th the court passed the order, Which is the subject matter of this revision.

When the first accused filed a memo for the keys being handed over to him in pursuance of that order, it was found that the keys had not been produced before court by the Kundara Police. It is seen from the records that the court called upon the Circle Inspector of Police to submit an explanation for the non-production of the keys till then. The explanation is not found among the records, and the keys do not appear to have been produced in court. In the meanwhile this revision was filed and on 15-6-1959 this court passed an order of interim stay, directing that the keys need not be given to the accused if they had not yet been handed over.

4. The order of the learned Magistrate is. attacked by the Revision. Petitioner as one passed without jurisdiction and he has characterised it as an unwarranted interference by the court in the investigation of a cognizable offence by the police. The Privy Council decision reported in Emperor v. Nazir Ahmad, AIR 1945 PC 18,

was cited by the learned counsel for the petitioner in support of this contention. That was a case where the investigation into a charge under Sections 109 and 409 against a receiver was prohibited by the High Court on the ground that similar proceedings taken against the receiver earlier were found to be unsustainable.

In quashing the order of the High Court the Privy Council held that it was not for the judiciary to interfere with the statutory rights of the police to investigate the circumstances of an alleged cognizable crime and that the court gets jurisdiction to find whether the charge is false or not only after the case is charged and comes up for trial or inquiry before it. However the above decision is not of much help in the present case. Here the order passed by the Magistrate to return the key taken from the possession of the accused on the undertaking that it will be produced if and when required, cannot by any stretch of imagination be termed an interference by the court with the investigation of the case by the police.

5. Before considering the question of jurisdiction I may refer to the procedure adopted by the police which does not appear to be quite proper. It cannot be said that they have acted with circumspection in so hurriedly arresting the accused who were found in actual occupation of the house, locking up the house and taking the key from them, thereby depriving the accused of their possession. The seizure by the police of the keys from the accused was not done under Section 51 or 53, Criminal Procedure Code. They were presumably seized by the police to be produced in court as material objects in the case. Both sides gave the keys in their possession to the police who look them evidently to be produced in court as material objects. The police could well have left the keys with the parties on the undertaking that they would be produced as and when required by the court.

The locking up of the house and the seizure of the keys which practically resulted in the eviction of the occupants of the house at the very beginning of the investigation cannot be characterised as a proper line of action on the part of the police. It is strange thing that even after the lapse of more than 8 months the investigation is incomplete and the final report by the police not filed. This state of affairs only lends colour to the allegation made by the accused, even as early as in the bail application, that the object of the complaint and the registering of the case

was to forcibly oust them of their possession of the building. The Magistrate will direct the police to complete the investigation, if any further investigation is to be made and put in a final report without further delay.

6. The provision of the Criminal Procedure Code relating to the custody and disposal of property seized by the police or produced before court are contained in Sections 516A to 525. The Magistrate has not specified the provision under which he was acting. The contention of the learned counsel for the counter-petitioner is that the order directing the return of the keys would come under Section 523. That section reads :

'The seizure by any police-officer of property taken under Section 51, or alleged or suspected to have been stolen, or found under circumstances which create suspicion of the commission of any offence, shall be forthwith reported to a Magistrate who shall make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained respecting the custody and production of such property.'

Though it is not clear under which provision the keys were seized by the police, the words 'found under circumstances which create suspicion of the commission of any offence' appears to be wide enough to include the seizure in the present case. However no elaborate consideration of the problem, seems necessary since, in view of the circumstances under which the police came into possession of the keys of the house, the Magistrate's order directing the return of the keys to the person from whom they were taken, as a temporary measure cannot be characterized as unauthorised or illegal. Even if the order is not one passed under any provision of the Code it can be treated as an administrative order which could be well supported in the circumstances of this case.

7. However the orders of the Magistrate giving sanction to the respondents to dwell in the house till the disposal of the case or until evicted from there by an order of a competent civil court and directing the petitioner not to create any trouble to the accused or disturb their possession are not warranted and are uncalled for at this stage. The accused did not pray for any such directions and the

learned Magistrate has not specified the section of Criminal Procedure Code under which he thought it fit to pass an order allowing the accused to be in undisturbed possession as soon as the investigation of the case has begun. Evidently the learned Magistrate had in mind Section 145 when-he passed the order directing the petitioner not to disturb the possession of the accused till a competent civil court orders otherwise. The learned Magistrate ought to have stated the section under which he acted. If any breach of the peace is likely, the police and the Magistrate have to take necessary action under the appropriate sections of the Code.

8. In the result the order of the Magistrate directing the return of the key to the accused on kychit is upheld. The revision petition is ordered accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com