

Narain Vs. State

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Court : Rajasthan

Decided On : Oct-17-1960

Reported in : 1961CriLJ559

Judge : L.N. Chhangani, J.

Appellant : Narain

Respondent : State

Judgement :

ORDER

L.N. Chhangani, J.

1. This is a reference by the Sessions Judge, Jhunjhunu recommending that the order of the Sub-Divisional Magistrate, Jhunjhunu dated 16-2-60 rejecting the complainant's application be set aside and he be directed to give effect to his order dated 21-10-1959 directing the delivery of possession of immovable property in dispute to the complainant.

2. The relevant facts are these:

Narain, the complainant filed a complaint against Nathuram and two others under Section 448 Indian Penal Code in the Court of a Sub-Divisional Magistrate, Jhunjhunu. After trial on 21-10-1959, the Sub-divisional Magistrate convicted the

accused and further directed that the property from which the complainant was forcibly dispossessed be restored to his possession. The accused Nathu and others filed an appeal against that order convicting them and directing delivery of possession to the complainant and got the operation of the order relating to delivery of possession stayed. The appellate Court, vide its order dated 28-1-1960, maintained the conviction of all the three accused but reduced the sentences. However it did not give any specific directions regarding the delivery of the possession of the property to the complainant but obviously by affirming the order of the lower Court except in respect of the extent of sentences, the direction relating to the delivery of the possession was impliedly maintained by the appellate Court.

After the decision of the appeal, the complainant again moved the Sub-divisional Magistrate for enforcing its earlier order dated 21-10-1959 and restoring possession of the property to him. The Sub-divisional Magistrate by his order dated 16-2-1960 rejected the application and directed the applicant to move the appellate Court if he so liked. The complainant challenged the order of the Magistrate in a revision petition before the Sessions Judge. In the meanwhile a revision by the accused against their convictions came to be decided by this Court, and except for a reduction in the sentence passed on Nathu accused the order of the Magistrate was maintained.

The Sessions Judge, in revision, took the view that the appellate and revisional Courts should be deemed to have maintained the direction relating to the delivery of possession and that the trial Court having passed an order under Section 522 Cr. P.C. at the time of recording conviction of the accused, it was quite competent to enforce the order after the dismissal of the appeal of the accused and the vacation of the stay order and that this was not a move for obtaining a fresh order under Section 522 Cr. P.C. and the bar after one month's time could not operate. Holding that the trial Court was not justified in directing the complainant to approach the appellate Court, he has made the above recommendations.

3. Mr. Jain for the complainant appeared in support of the reference while Mr. Chatterji appearing for the accused has very strongly opposed the reference.

4. The first question that calls for determination is: whether the Magistrate was moved by the complainant for a fresh order under Section 522 Cr. P.C. or it was merely a move on the part of the complainant to secure merely the enforcement of the previous order passed by the trial Magistrate. The appellate and revisional courts having maintained the convictions of the accused and having not specially set aside the direction of the trial Magistrate regarding delivery of possession to the complainant it will be quite proper to hold that the direction was upheld by the higher courts in appeal and revision and the trial court's order in this behalf remained uninterfered with. It must follow that the complainant's later application did not seek a fresh order under Section 522 Cr. P.C. but merely solicited the enforcement of an earlier order.

5. The next question for consideration relates to the competence of the Magistrate to enforce and execute its order after the decision of the appellate or the revisional courts. The Magistrate thought that he lost all jurisdiction in the case and could not execute or enforce his order after the decision of the appeal. He based this conclusion by reference to note 11 to Section 522 Cr. P.C. of Chitale's Cr. P.C. Earlier in his judgment he made reference to *Fida Hussain v. Sarfaraz-Hussain* AIR 1933 Pat 617 and *Aswini Kumar Das v. Sasanka Mohan Bose* AIR 1932 Cal 750(1) cited by the accused

the former to show that the proper course for the applicant is to move the appellate court and the latter to show that this Court could pass the order applied for only within one month of the date of judgment.

He observed that the

note says that under such circumstances (as existing in the case in hand) the trying Court should reject or return such application directing the complainant to move the appellate court.

Note 11 ;relied upon by the Magistrate I must observe, is based mainly on the two rulings cited on behalf of the accused before the Magistrate, A reference to these cases shows that a direction for moving the appellate Court was made in facts and circumstances materially different from the facts and the circumstances of the

present ease and the Magistrate's interpretation of the note as laying down the rule for circumstances 'as existing in the ease in hand' is not well founded. In both these cases the trial Magistrates did not pass orders under Section 522 Cr. P.C. either at the time of conviction or within one month therefrom. After the disposal of the appeals or revisions by the higher courts, the complainants approached the trial Magistrate to pass orders under Section 522 Cr. P.C.

In these circumstances, it was rightly held that the trial Courts were not competent to pass orders under Section 522 Cr. P. 'C, These cases are however, no authority for the proposition accepted by the Magistrate that he could not execute or enforce an order, under Section 522 Cr. P.C. passed by him at the time of recording conviction of the accused, in spite of the order having been maintained by the higher courts. A case in point is *V. Narayana v. Madar Khan* AIR 1944 Mad 473. In that case the Magistrate passed an order directing delivery of possession on 16-10-1942 within one month from the date of the conviction. Pending the appeal by the accused the execution of the said order was stayed by the appellate Court. After the appeal was dismissed and the stay order was vacated the Magistrate passed an order on 7th April, 1943 directing delivery of possession as per original order. The order was upheld by the High Court and it was held that the order dated 7th April, 1943 was not the order under Section 522 Cr. P.C.

That order was passed on 16-10-1942 itself Only it was given effect to later since till then there was a stay by the appellate Court. This case is on all fours with the present case and the principle of this case is fully applicable to the facts of the present case. I must, therefore hold that a Magistrate passing an order under Section 522 Cr. P.C. either at the time of recording conviction of the accused or within one month of the conviction is quite competent to enforce and execute the order even after the lapse of a period of one month provided the order is not set aside by the higher courts and the mere fact that in the meanwhile appeal and revision were filed and decided cannot affect the competence of the Magistrate to execute and enforce, a valid and subsisting order.

I am quite clear that the view of law taken by the Magistrate is wrong and is the result of an improper use of the commentaries, it will be proper to observe that the

courts should not readily lay down general propositions by reference to short and abstract conclusions quoted from decided cases in the commentaries but should go through the reports of the cases themselves for the proper understanding of the facts and circumstances with reference to which the principles were laid down. A departure from this practice is very likely to mislead the courts and to result in the enunciation of incorrect propositions and the formation of wrong conclusions.

6. I may now notice one more submission made by Mr. Chatterjee in this connection. It was pointed out by him that the complainant had already filed a civil suit against the accused for possession of the property and that it would be hardly proper and fair to enforce the order when the parties had already approached the civil court. Indisputably the pendency of a civil suit is a circumstance which should be considered at the time of passing an order under Section 522 Cr. P.C. but it will be hardly a relevant factor to be considered in connection with the enforcement of the order. However, I gave time to thy parties to inform me as to the stage at which the civil suit was. I have been informed today that only issues have been framed and a preliminary issue is being tried. It will be hardly fair in this stage of affairs to deprive the complainant of his rights to get the order passed by the trial Magistrate on 21-10-1959 enforced.

It may be that the suit filed by the complainant may be affected or may even become infructuous on his getting possession with the help of the criminal court in execution of the order under Section 522 Cr. P.C. but it does not follow therefrom that the accused's civil rights will be affected. There is nothing to prevent the accused from asserting their civil rights in competent courts and to secure their enforcement. The orders of the criminal courts and actions taken in pursuance of these orders are subject to the decisions of rights by civil courts and do not and need not prejudice them in any manner. In these circumstances the pendency of the civil suit cannot stand in the way of the enforcement of the Magistrate's order.

7. In the light of the above observations, the reference is accepted; the order of the Magistrate is set aside and he is directed to enforce his earlier order dated 21-10-1959.

