

**Bagirath Singh Vs. State**

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**Court :** Rajasthan

**Decided On :** Jan-13-1992

**Reported in :** 1992CriLJ3934

**Judge :** R.S. Verma, J.

**Acts :** [Indian Penal Code \(IPC\), 1860](#) - Sections 441, 448 and 454

**Appeal No. :** S.B. Cr. Misc. Petn. No. 149/90

**Appellant :** Bagirath Singh

**Respondent :** State

**Advocate for Def. :** N.S. Acharya, P.P.

**Advocate for Pet/Ap. :** R.K. Charan, Adv.

**Judgement :**

ORDER

**R.S. Verma, J.**

1. Since a very short point is involved, I have heard the matter finally at the admission stage itself.

2. The facts before me are not in dispute. At the relevant period, Shri Rajendra Singh Rathore was posted as Munsif & Judicial Magistrate, First Class at Bar.

Since no residential government accommodation was available at Bar, he used to stay at this Dak Bungalow, Bar. On 29-12-87, Shri Rathore went away on leave to his home village. While leaving for his village, he left his household effects in Room No. 1 of the Dak Bungalow and locked the same. He handed over the key of the room to his peon Pramod Kumar. When Shri Rathore was away from Bar, the petitioner who was junior engineer incharge of the Dak Bungalow got the lock of the room broken; he shifted the luggage of Shri Rathore to some other room and left the same in charge of the chowkidar of the Dak Bungalow. This was so done because some senior officials of the P.W.D. were likely to visit Bar and the room was to be kept ready for them. Shri Rathore returned from his home village on 4-1-88. When he came to know of the incident, he lodged an FIR with P.S., Bar the same day. Upon such FIR due investigation was made and a final report was given by saying that no offence was made out. Learned Munsif & Judicial Magistrate, Bar by impugned order dated 5-3-50 took cognizance of offences u/ s. 448 and 454, IPC against the petitioner. Aggrieved, petitioner has come to this Court.

3. I have heard Shri R. K. Charan and learned P.P. on behalf of the State and I am of the view that this petition should succeed. Dak Bungalows are provided at various towns by the government so that government officials coming on short visits may stay therein. They are not meant to be regular residence or a substitute for such residence. Shri Rathore was only a licensee in the Room. The room was required to be used for senior P.W.D. officials but unfortunately the room was locked. Shri Rathore was away and hence he could not have been contacted. Even his peon, who had the key of the lock of the room could not be contacted. It was under such circumstances that the lock was broken and luggage was shifted elsewhere.

4. Now, offences under Sections 448 and 454 are only graver offences of one Under Section 441, IPC. No offence can be made out Under Section 454 or 448, IPC unless primarily offence is made out Under Section 441, IPC. Section 441, IPC defines criminal trespass and reads as follows:

441. Criminal trespass.-- Whoever enters into or upon property in the possession of another with intent to commit an offence or to Intimidate, insult or annoy any person in possession of such property,

or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit 'criminal trespass.

A bare reading of this section shows that criminal trespass is constituted when the act of trespass is done with the requisite intention viz intent which should be (i) to commit an offence or (ii) to intimidate, insult or annoy any person in possession of such property. Thus mens rea is an essential ingredient of an offence of criminal trespass. In the order taking cognizance against the petitioner, the learned judicial Magistrate has not stated that the petitioner was actuated with any such intent. The final report given by the police categorically shows that in breaking open the lock or in shifting the luggage of Shri Rathore, the petitioner was not actuated by any dishonest intention. The learned Magistrate has not given any reasons to say that it was not so.

5. When the petitioner did not have the requisite intention, an offence Under Section 441, IPC was not made out. A fortiori, no offence could be made out under Sections 448 and 454, IPC.

6. I, therefore, find that learned Munsif & Judicial Magistrate, Bar erred in taking cognizance against the petitioner for offences Under Sections 448 and 454, IPC. At best, it was a case of honest civil trespass, for which no cognizance could have been taken at all.

7. It would not be out of place to say that it is high time that the High Court refuses to open new courts or refuses to post judicial officers at stations, where government fails to provide suitable residential accommodation to judicial officers. The case illustrates the plight of judicial officers posted at places where there is no government accommodation for them. Registry may bring these observations to

notice of all the Hon'ble Judges of this Court so that the full Court may evolve a proper policy at an early date in this regard.

8. No other point was urged before me.

9. This Misc. petition is, therefore, accepted and the order of the learned Munsif & Judicial Magistrate, Bar dated 5-3-90 taking cognizance against the petitioner is set aside. The proceedings against him are quashed. The learned Magistrate shall not take any action against the petitioner on the basis of F.R. submitted by the police in this matter.

10. The Misc. Petition is disposed of, accordingly.

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