
Ram Sanehi and Others Vs State of U.P. and Another

Criminal M.A. No"s. 26287 and 29130 of 2007

Court: Allahabad High Court

Date of Decision: April 2, 2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) â€” Section 156(3), 200, 202, 204, 482#Penal Code, 1860 (IPC) â€” Section 395, 397#Provincial Small Cause Courts Act, 1887 â€” Section 25#Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 â€” Section 3(1)

Citation: (2009) 3 ACR 2677

Hon'ble Judges: Poonam Srivastav, J

Bench: Single Bench

Advocate: S.K. Tripathi, for the Appellant; R.J. Singh and A.G.A., for the Respondent

Judgement

Poonam Srivastav, J.

Heard Sri S. K. Tripathi, learned Counsel for the applicants, Sri R. J. Singh, counsel for the opposite party No. 2

and learned A.G.A. for the State.

2. Counter-affidavit has been filed on behalf of the opposite party No. 2 which is on record. Learned Counsel for the applicants does not intend to

file any rejoinder-affidavit and, therefore, I proceed to hear the arguments and decide these two applications finally as agreed between the parties.

3. These two applications u/s 482, Cr. P.C. were filed for quashing the proceedings in Complaint Case No. 2722 of 2006, Jagdish Chandra v.

Ram Sanehi, under Sections 395 and 397, I.P.C. read with Section 3(1)(x), S.C./S.T. Act registered at Case Crime No. 667 of 2003, Police

Station, Chhibramau, District Kannauj. The applicant Ram Sanehi is husband of the landlady of a shop which was occupied by the complainant

opposite party No. 2 Jagdish Chandra. It is admitted that Jagdish Chandra was tenant of the shop in question. A suit for eviction was instituted by

the landlord before the Judge, Small Causes Courts on the ground of arrears of rent. The suit was decreed and the judgment was challenged in a

proceeding u/s 25 of the Provincial Small Causes Courts Act. The revision was also dismissed and order of the trial court stood confirmed. The

two orders were challenged in Criminal Misc. Writ Petition No. 64008 of 2007, Jagdish Chandra v. State of U. P. and another. The writ petition

was dismissed by High Court on 2.1.2008. However, the tenant-opposite party No. 2 was allowed four months' time from the date of the

judgment to file an undertaking before the court below within three weeks that he shall deposit the entire amount awarded within a period of one

month before the Judge, Small Causes Court and also continue to deposit damages at the rate of Rs. 100 per month till the date he hands over the

possession. The tenant-opposite party No. 2 was also restrained to induct any third person in the shop in question and a clear and unequivocal

undertaking was to be filed that the shop will be handed over to the landlord within a period of four months. Meaning thereby the possession was

to be transferred by 2.5.2008. It is an admitted fact by the counsel appearing for the opposite party No. 2 and a statement has been made at bar

that the possession has been handed over three months before, i.e., some time in January, 2009 and today the landlord is in possession. This fact

has been disputed by the learned Counsel for the applicants. However, I am not inclined to adjudicate on the question whether the decree has

been executed or not?

4. The facts giving rise to the instant dispute is that the tenant-opposite party No. 2 moved an application u/s 156(3), Cr. P.C. to register the F.I.R.

against the applicants under Sections 395 and 397, I.P.C. and Section 3(1)(x), S.C./S.T. Act. The F.I.R. was registered consequent to an order

passed by the Magistrate. The investigation was conducted by the Investigating Officer and final report was submitted. A clear conclusion was

arrived at by the Investigating Officer that the said F.I.R. was lodged only with a view to pressurise the applicants (landlord) to restrain them from

evicting the complainant from his illegal possession over the shop in question. A protest petition was filed on 14.9.2004, a copy of which has been

annexed as Annexure-7 to the affidavit. The protest petition was treated as a complaint and statements under Sections 200 and 202, Cr. P.C.

were recorded. Consequent thereon, the applicants were summoned u/s 204, Cr. P.C.

5. Learned Counsel for the applicants has drawn my attention to the fact that after the order was passed by the three Courts consecutively to

handover the possession of the shop in question, an Advocate Commissioner had gone to execute the decree and handover the possession of the

shop in question in compliance of the judicial orders, The applicants were handed over the possession but they were once again evicted and

possession was taken over by the tenant/complainant which resulted in a proceeding u/s 107/116, Cr. P.C. on the same day. A photocopy of the

challani report has been brought on record by means of Annexure-5 to the affidavit. The main submission advanced before this Court for quashing

the complaint as well as summoning order is that the complaint is frivolous one and only with a view to pressurise the applicants from not taking

possession of the shop in question. Admittedly the document which has been annexed with the application goes to show that the Advocate

Commissioner was successful in getting the possession and handing over it to the landlord but on his own admission of the complainant, he was in

possession since till January, 2009. Meaning thereby forceful possession was taken by the applicants after the decree was executed.

6. I have also perused the complaint which clearly demonstrate that the dispute is initially a landlord-tenant dispute and the facts and circumstances

brought on record cannot be overlooked. It is obvious that till January, 2009, the complainant continued to be in possession. Admittedly it was

forceful possession despite there being an order that the possession should be handed over within four months from the date of the order of the

High Court which has not been done and it is, therefore, apparent that the proceedings initiated are vexatious and only with a view to harass the

applicants. In fact such proceedings are nothing short of abuse of process of the Court causing anxiety that valuable time of the Court is wasted in

its adjudication. Admittedly and obviously it is apparent from the record as well, that the order of the High Court have been flouted on one hand

and thereafter the complainant opposite party in a high handed manner adopted the criminal proceeding to circumvent the proceedings of the lower

court, such as the execution proceeding and flouting specific directions of this Court.

7. In view of what has been observed above, I am of the considered opinion that the criminal proceedings initiated on the basis of the Criminal

Complaint Case No. 2722 of 2006, Jagdeesh Chandra v. Ram Sanahi, under Sections 395 and 397, I.P.C. and Section 3(1)(x), S.C./S.T. Act,

Police Station, Chhibramau, District Kannauj are absolutely frivolous, vexatious and an abuse of the process of the Court, consequently are liable

to be quashed. Accordingly the applications are allowed.