Shyamaprasad Mandal Vs Indra Narayan Dan and Others

Criminal Rev. No. 1125 of 1974

Court: Calcutta High Court

Date of Decision: June 18, 1975

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 145, 484

Citation: 81 CWN 6

Hon'ble Judges: R. Bhattacharya, J

Bench: Single Bench

Advocate: Sunil Kumar Basu and Madan Mohan Mullick, for the Appellant; Dilip Kumar Datta and Subhas Kumar Deb, for the Respondent

Final Decision: Allowed

Judgement

R. Bhattacharya, J.
This revisional application has been directed against the judgment of the Sessions Judge, Purulia, setting aside the

order of the Sub-Divisional Magistrate, Purulia, passed u/s 145 of the Code of Criminal Procedure. The petitioner Shyama Prosad Mondal alias

Bhramar Mondal who was the first party before the learned Magistrate filed an application before the Sub-Divisional Magistrate, Purulia on

16.11.72 which was ultimately converted to one u/s 145 of the Code of Criminal Procedure on 4.12.72. The parties filed their show cause

petitions and also affidavits and documents on their behalf. The learned Magistrate on consideration of the materials before him came to the finding

that the first party, namely, Shyama Prosad Mondal was in possession of the disputed land and that the opposite parties including the O.P. 1, Indra

Narayan Dan who claimed to be a Bargadar in possession, were not in possession of the disputed land, plot no. 709 under R. S. Khatian No. 262

and plot no. 710 under R. S. Khatian No. 260 in village Neckra, P. S. Man Bazar, District Purulia. The learned Magistrate vacated the order of

attachment and appointment of Receiver in respect of the disputed lands against that order Indra Narayan Dan, one of the second party claiming

himself to be a Bargadar, preferred a revisional application before the Sessions Judge tinder the provisions of the new Criminal Procedure Code,

1973. The learned Sessions Judge, however, set aside the order of the learned Magistrate on the finding that it was not correct. Against that

decision this revisional application has been filed by the first party, namely, Shyama Prosad Mondal alias Bhramar Mondal u/s 439 of the old

Criminal Procedure Code, 1898 read with section 561A of the old Code. Whatever section might have been mentioned, this application is a

revisional application and as such it was admitted.

2. I have heard Mr. Basu, the learned Advocate appearing on behalf of the petitioner and Mr. Datta, the learned Advocate on behalf of the

contesting opposite party, Indra Narayan Dan. The first contention of Mr. Basu before this Court is that the order of the learned Sessions Judge

below was without jurisdiction because the learned Sessions Judge was to act under the provision of the old Code fur exercising his revisional

jurisdiction by sending the case to the High Court with recommendation for setting aside the impugned order, if he was of the view that the

judgment of the court below was illegal and wrong. Mr. Basu submits that the learned Sessions Judge ought not to have disposed of the matter

under the provisions of the new Criminal Procedure Code. In this connexion my attention has been drawn by Mr. Datta to Section 484, Sub-

Section (2), Clause (a) of the Criminal Procedure Code 1973. According to clause (a) of Sub-Section (2) of Section 484, if immediately before

the date on which the new Code comes into force, here on 1.4.74, there is an appeal, application, trial, inquiry or investigation pending then such

appeal, application, trial, inquiry of investigation shall be guided by the provisions of the old Code of Criminal Procedure, 1898. This is a saving

clause. In the instant case immediately before the commencement of the new Code, the inquiry upon an application converted to a proceeding u/s

145 of the old Criminal Procedure Code was pending and this was disposed of by an order dated 27.7.74 only a few months after the

promulgation of the new Code. Thereafter an application was filed in the revisional jurisdiction of the Sessions Judge. This being after 1.4.74, that

is the date of the commencement of the new Code, must be regulated by the provisions of the Code of 1973. Had this application been pending

immediately before the commencement of the new Code of 1973, then certainly the matter would not have been guided by the old Code. When

after the disposal of the proceedings u/s 145 of the Criminal Procedure Code and subsequent to the promulgation of the new Code, the application

was filed before the Sessions Judge, he was justified in disposing of the matter according to the provisions of the new Code. In this connection it

has been argued by Mr. Basu that the revisional application or the appeal should be treated as a continuation of the original proceedings and as the

original proceeding u/s 145 of the Criminal Procedure Code was pending before the new Code came into existence, the provisions of the old

Code should have been followed even in the revisional application. The insertion of the word ''appeal'' besides the words ''application'', ''trial'',

''inquiry'' and ''investigation'' in Clause (a) of Sub-Section (2) of Section 484 of the new Code of 1973 shows that ''appeal'' or revisional

application cannot be treated as continuation of the original application, inquiry, trial or investigation as mentioned in the said Clause (a). In the

absence of clear and specific provision within section 484 or any part of the New Code that appeal and revisions would be treated as continuation

of the original application, inquiry, trial, investigation or any other original proceedings and that if appeals and revisions are filed after the

commencement of the New Code, they are to be guided by the provisions of the old Code, the contention of Mr. Basu cannot be accepted.

According to the provision of the new Code, the old Code is repealed but the provision of the old Code is applicable in cases clearly mentioned in

clause (a) of sub-section (2) of Section 484. In this view of the matter also it cannot be heard to say that the provision of the old Code would be

applicable either before the Sessions Judge or before this Court in case of revisions and appeals filed after 1.4.73. I cannot accept the contention

of Mr. Basu as urged before me. Although the instant revisional application before this Court was purported to be one u/s 439 of the old Code of

the Criminal Procedure, 1898, that application has been accepted by this Court as revisional application u/s 401 of the new Code and this can be

done by the court in suitable circumstances for doing proper justice.

3. The main question which arises for consideration in the instant application is whether the judgment of the Sessions Judge should be interfered

with and set aside as prayed for by the petitioner. The contention of Mr. Basu is that the Sessions Judge, according to law, was wrong in setting

aside the order of the learned Magistrate on the question of possession of the parties in the disputed lands because that was a question of fact

which should not have been interfered with on revisional application. This point was urged before the learned Sessions Judge. Some decisions, it

appears from the judgment, were cited on behalf of the First Party to argue that the court while dealing with the revisional application should not

reopen the question of fact and reappreciate the evidence on record and in support of that contention two Calcutta decisions were mentioned. The

learned Sessions Judge, however, has referred to a decision reported in A. I. R. 1953 S.C. at page 411. That is the case of Arjunlal Misra v. The

State. That was in connexion with a conviction of an accused. The learned Sessions Judge wants to say in his judgment that this decision of the

Supreme Court lays down the proposition that on any revisional application the court can decide questions of fact. I have gone through the said

judgment but, I am afraid, the facts are quite different and the principles laid down there cannot be applicable in the instant case. On the other

hand, the decision of the Supreme Court in the case of R. H. Bhutani v. Miss Joni J. Desai, reported in A. I. R. 1968 S. C. at page 1444, should

be looked into. That was a case relating to a proceeding u/s 145 of the Criminal Procedure Code. It has been held in that case as follows:

The satisfaction under sub-s. (1) is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is,

therefore, in his discretion which, no doubt, has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast

rule can, therefore, be laid down as to the sufficiency of materials for his satisfaction. The language of the sub-section is clear and unambiguous that

he can arrive at his satisfaction both from the police report or ""from other information"" which must include an application by the party dispossessed.

The High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material which has satisfied the

Magistrate"".

4. It has been the established custom of the High Courts not to interfere on revisional application with the finding of fact arrived at by the trial court

or the court of fact below unless it is without evidence or based upon irrelevant evidence or there has been a perverse finding causing great

injustice. It is not the function of the High Court to reappreciate the evidence on record. If the finding is reasonable and on the basis of evidence,

this Court will not interfere with the finding even if it may take a different view of the evidence. In the instant case the parties, to prove their

respective possession in the disputed lands, produced several affidavits and documents. The first party, the petitioner before this Court filed four

affidavits and certain documents. On the other hand, the second party filed two ''affidavits and certified copy of the R. S. record to show the

possession of the opposite party no. 1 as Bargadar. The learned Magistrate, it appears from his judgment, considered the affidavits filed on the

side of the parties and also the documents filed. He has discussed about the reliability or otherwise of all those materials and ultimately he has come

to his finding that the first party, Shama Prosad Mondal was in possession of the disputed lands at the relevant time. I have also considered the

judgment of the learned Sessions Judge. I find from his judgment that he did not discuss as to the value of the affidavits giving any reason. On the

other hand, he has simply stated in one sentence practically that the affidavits filed by the parties do not show that the affidavits filed by the parties

are reliable. Moreover, several documents were filed on the side of the first party. He did not make any endeavour to consider those documents to

ascertain their value. It appears from his judgment that the learned Sessions Judge found fault with the learned Magistrate to say that the learned

Magistrate overlooked the R. S. Khatian wherein the second party no. 1, Indra Narayan Dan was recorded as Bargadar in possession of the

disputed lands. Mr. Dutta has submitted that the learned Magistrate did not notice that according to R. S. Khatian, Indra Narayan Dan was the

only person in possession of the disputed lands. On the side of the first party there is also the R. S. Khatian and it appears from the reading of the

Khatian that the person on whose behalf the first party was possessing the land was recorded as tenant and the opposite party no. 1 was

described as Bargadar in possession. Of course, from which year the Bargadar was in possession has not been noted. That portion has been left

blank. Mr. Dutta submits that according to the learned Magistrate both the parties are in possession of the disputed lands and if so, there can be no

proceeding u/s 145 of the Criminal Procedure Code. The learned Magistrate on consideration of the R. S. Khatian finds that possession of both

the parties are there Practically speaking, the person on whose behalf the first party was holding and possessing the land has been recorded as

tenant and Indra Narayan''s possession has been recorded as Bargadar. The learned Magistrate in one sense was right to hold that the possession

of the tenant is there and also the possession of the Bargadar but ultimately he rejected the genuineness or correctness of the R. S. Khatian

recording the possession of Indra Narayan as Bargadar on consideration of the evidence of both the parties and the documentary evidence

produced before him including the rent receipts on the side of the first party. Going through the judgments of both the courts below it must be said

that the findings of the learned Sessions Judge and his criticisms were without evidence and speculative and moreover he ought not to have

interfered with the finding of the learned Magistrate which was reasonably based upon evidence. It may be that the learned Sessions Judge viewed

the evidence from a different angle of vision but that does not mean that he should have set aside the order of the learned Magistrate. It is curious

to note in this connexion that the learned Sessions Judge himself does not say specifically that the second party is in possession of the disputed

lands. However, when it appears that the findings of fact of the learned Magistrate are reasonable, I must say that the learned Sessions Judge was

not justified in setting aside the order of the learned Magistrate. In the result, the instant revisional application succeeds and the Rule is hereby

made absolute. The order of the learned Magistrate passed on 27.7.74 shall stand and the impugned order of learned Sessions Judge is set aside.

Send down the records of the lower courts at an early date.