

Sukdhis Khatick Vs State

Court: Calcutta High Court

Date of Decision: Aug. 3, 1973

Acts Referred: Criminal Procedure Code, 1898 (CrPC) â€” Section 522, 622(1)
Penal Code, 1860 (IPC) â€” Section 341, 350, 447, 448

Citation: (1975) 1 ILR (Cal) 306

Hon'ble Judges: Talukdar, J

Bench: Single Bench

Advocate: Gurudas Bhattacharya, for the Appellant; Santi Ranjan Goswami and Uma Sanyal, for the Respondent

Final Decision: Allowed

Judgement

Talukdar, J.

This Rule must be made absolute. The Rule is at the instance of the two accused Petitioners, Sm. Sukdhis Khatick and Sm.

Baban Khatick, directed against an order dated February 12, 1973, passed by Sri K. Chatterjee, Presidency Magistrate, Sixth Court, Calcutta,

ordering the restoration of possession of the room at the top floor to the de facto complainant Munni Devi in Case No. G.R. 620 of 1970.

2. The facts leading on to the Rule are short and simple. Five accused persons were placed on their trial before the learned Magistrate to answer

charges under Sections 447, 448 and 341 of the Indian Penal Code. Three of them were acquitted ultimately by the learned trying Magistrate and

the present two accused Petitioners though acquitted by Sri B.K. Misra, Presidency Magistrate, Sixth Court, Calcutta, on July 20, 1971, u/s 341,

Indian Penal Code, were convicted by the learned trying Magistrate u/s 448, Indian Penal Code and sentenced to pay a fine of Rs. 50 each, in

default to suffer simple imprisonment for a period of one month each. An application thereafter followed u/s 522, Code of Criminal Procedure, at

the instance of the de facto complainant Munni Devi. The application has had also a chequered career and at one state there was a revisional

application before the High Court which sent it back on remand. After the case came back it was disposed of ultimately by Sri (K. Chatterjee,

Presidency Magistrate, Sixth Court, Calcutta, on February 12, 1973. By that order the learned Presidency Magistrate directed restoration of

possession of the room to the de facto complainant Munni Devi. This order has been impugned and forms the subject-matter of the present Rule.

3. Mr. Gurudas Bhattacharya, Advocate appearing in support of the Rule on behalf of the accused Petitioner, made a short submission. Mr.

Bhattacharya contended that the essential ingredients of Section 522, Code of Criminal Procedure, have been thrown to the four winds by the

learned Presidency Magistrate and the resultant order has been bad and repugnant. In this context, Mr. Bhattacharya submitted that the offence

must be attended by criminal force and criminal force within the meaning of Section 350, Indian Penal Code, must be force used to any person

without that person's consent and cannot cover an incident where force is used to an inanimate object. Mr. Bhattacharya relied on the decision

reported in Nani Gopal Deb and Another Vs. Bhima Charan Rakshit, . Mr. Santi Ranjan Goswami, Advocate, appeared on behalf of the de facto

complainant opposite party No. 2, Munni Devi. Mr. Goswami submitted that the findings of fact arrived at by the learned Presidency Magistrate

should not be interfered with in revision, more so when the accused persons, have been convicted u/s 448, Indian Penal Code. Mrs. Uma Sanyal,

Advocate appearing on behalf of the State, also joined issue. Mrs. Sanyal submitted that the essential ingredients of Section 522, Code of Criminal

Procedure, have been established and the learned Presidency Magistrate while convicting the two accused Petitioners u/s 448, Indian Penal Code,

found, inter alia, that when the de facto complainant returned and tried to enter into the room in question she was restrained by the accused

persons from entering into the room. This, according to her, satisfies the essential ingredients of Section 522, Code of Criminal Procedure, to

enable the Court to restore possession of the immovable property. Mrs. Sanyal also referred to a case decided by Bagchi J. in Abul Hossain and

Ors. v. Masadul Huq (1972) Cri. L.J. 1499.

4. Having heard the learned Advocates appearing on behalf of the respective parties and on going through the materials on record I hold that there

is a considerable force behind the submission of Mr. Gurudas Bhattacharya. A reference is necessary to the material provisions of Section 522,

Code of Criminal Procedure, enjoining that

whenever a person is convicted of an offence attended by criminal force or show of force or criminal intimidation and it appears to the Court that

by such force or show of force or criminal intimidation any person has been dispossessed of any immovable property, the Court may, if it thinks fit,

when convicting such person or at any time within one month from the date of the conviction order the person dispossessed to be restored to the

possession of the same.

Applying the said yardstick to the facts of the present case I find that although the two accused persons who are the Petitioners in the present Rule

were convicted by the learned Presidency Magistrate u/s 448, Indian Penal Code, on July 20, 1971, the offence of which they were convicted was

not attended by criminal force to the judgment passed by Sri B.K. Misra, Presidency Magistrate, Sixth Court, Calcutta, convicting the two

Petitioners, I find that he has found unequivocally that during the absence of the de facto complainant's son-in-law, Ram Bahadur Chhetri, the

accused persons made criminal trespass into the said room by breaking open the padlock and they remained there after removing the belongings of

Ram Bahadur and his wife there. Specifically, therefore, the force used is an inanimate object, namely, the padlock. A confusion very often prevails

as to what is meant by the words "criminal force" and for the proper definition one has to turn to Section 350 of the Indian Penal Code. It lays

down that whoever intentionally uses force to any person without that person's consent, in order to the committing of any offence, etc. is said to

use criminal force to that other. Bereft of all verbiage, therefore, criminal force is the force used to any person and not to any property. There is an

imprimatur of judicial decision on it, but without multiplying the cases on the point a reference may be made to the case of Nani Gopal Deb v.

Bhima Charan Rakshit Supra. Mitter J. delivering the judgment of the Division Bench held that when the entry into the rooms in question was made

by the accused in the absence of any person, such entry could not have been attended by criminal intimidation and although the trespass continued

its continuance was not responsible for the initial dispossession which was not attended by criminal force within the bounds of Section 350, Indian

Penal Code. The Division Bench, accordingly, set aside the order of the learned Magistrate u/s 622(1), Code of Criminal Procedure. I agree with

the decision and applying the said yardstick in the facts and circumstances of the present case, there has at best been use of force on the padlock

but not on the de facto complainant or her son-in-law or on the latter's wife. Further, the criminal force must be used at the time of the initial

dispossession and it will not do that the same was used subsequently when certain persons came to protest. The learned Presidency Magistrate,

appears to be under a misapprehension because he proceeded to find that as the de facto complainant returned and tried to enter into that room,

she was restrained by the accused persons from entering into that room. He appears to proceed on the footing that the subsequent restraint put

forward by the accused persons on the later entry by the de facto complainant into the room in question constitutes criminal force within the ambit

of Section 350, Indian Penal Code. It has never been intended by the Legislature and as such, on such finding the case cannot come within the

bounds of Section 522, Code of Criminal Procedure. The Division Bench has made that clear. Mrs. Sanyal pinpointed the observations made by

Bagchi J. in the case of Abul Hossain v. Masadul Haq Supra. Bagchi J. undoubtedly held therein that the subsequent use of criminal force would

make out an offence u/s 448, Indian Penal Code. He has distinguished the principles laid down in Nani Gopal Deb v. Bhima Charan Rakshit Supra

with great respect to my learned brother, I would prefer the principles laid down by the Division Bench and abide by the same. In this case, in view

of the clear and categorical finding arrived at by the learned trying Magistrate on July 20, 1971, that the criminal force used on the de facto

complainant was used on a latter occasion, I ultimately hold that a subsequent use of criminal force, even if it be found to be so, cannot

retrospectively convert an earlier incident into an offence of trespass and bring the case within the ambit of 522, Code of Criminal Procedure; The

contentions raised by Mr. Bhattacharya, accordingly, succeed.

5. It was incidentally submitted that the de facto complainant is a lady and she is prejudiced by the factum of dispossession. It was even urged by

Mr. Goswami appearing on behalf of the de facto complainant that it is expedient in the interests of justice that the helpless lady should be allowed

to come back and the order passed by the learned Presidency Magistrate may not be interfered with in revision. I have given my anxious

consideration to the matter and I have already given the steps of my reasoning to hold otherwise. Justice is in accordance with law and when there

is an alternative remedy provided for under the law of the land for getting back possession of the property, the de facto complainant, if so advised,

may seek her redress in the civil forum. The bounds of Section 522, Code of Criminal Procedure, cannot be explored to bring within its ambit the

border-line case or cases which are clearly ruled out by the said provisions. On ultimate analysis, therefore, I hold that the finding arrived at by the

learned Presidency Magistrate are bad in law and improper and should in the interests of justice be set aside.

6. In the result, the rule is made absolute and I set aside the order dated February 12, 1973, passed by Sri K. Chatterjee, Presidency Magistrate,

Sixth Court, Calcutta, in Case No. G.R. 620 of 1970.