
(1985) RLR 317

Delhi High Court

Case No: Criminal Revision Appeal No. 161 of 1983

Balhar Singh

APPELLANT

Vs

Goverdhan Dass etc.

RESPONDENT

Date of Decision: Feb. 11, 1985

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) " Section 145

Citation: (1985) RLR 317

Hon'ble Judges: H.L. Anand, J

Bench: Single Bench

Advocate: Avtar Singh Vir, S.K. Vohra, R.N. Chawla and M.R. Sharma, for the Appellant;

Judgement

H.L. Anand, J.

(1) One Sohan Singh (S.S.) owns B-71, Kirti Nagar Industrial Area and was having Saw Mill with machinery, office room etc. He let out all these

to Balhar Singh (B.S.) on 28.5-76 and put him into exclusive possession of the plot who began running the Saw Mill. Subsequently S.S. wanted to

increase the rent or alternatively to quit, and with that view got the power and light connections disconnected in Jan. 1979. Petitioner there upon

filled prosecution u/s 45/48 of Delhi Rent Act against S.S. in March, 1979, who was summoned as accused in that case. S.S. then filed a suit

against tenant torrent in 1979, which was ultimately dismissed. S.S. then filed eviction petition against petitioner in Sept., 1980 which was

dismissed as withdrawn on 22-10-81. In 1981, Sohan Singh, wanting to emigrate to Canada, planned to dispose of the property, contemplated its

sale to one Gulab and a threat to dispossess petitioner was given who, on 5-3-81 filed suit for injunction against S.S. and Gulab, etc. Civil Court

granted interim injunction on 13-3-81. On 6-6-81 respondent Goverdhan Dass (G. Dass) his sons Nathu and Omi threatened the petitioner with

forcible dispossession on the ground that they had purchased the property from S.S. Petitioner got sent legal notices to them that he should not be

evicted forcibly and without due course of law. These notices were never replied to. On 12-6-81 (& 13-6-81) petitioner complained to Mayapuri.

Police that S.S., Gulab, Nathu, Omi etc. were threatening him with forcible dispossession. He mentioned that eviction petition was filed by S.S.

against him and he had obtained injunction and he specifically sought protection of the police against threatened wrongful and forcible

dispossession. On 12-6-81 there was an abortive attempt by Goverdhan Dass etc to break into the property by demolition of the wooden gate

and fence around the plot. Petitioner's counsel gave details of the incident in his communication of 13-6-81 to the D.C.P. South and personally

met the D.C.P. On 29-6-81 Petitioner also filed a suit against S.S., Goverdhan Dass etc. for permanent injunction in which an interim injunction

was granted & confirmed in August 81. But on 2.7.81, one D. Singh, S.I. of Police came to the plot, abused petitioner, and threatened, him that if

he did not vacate, he would be involved in false cases and would even be put. under arrest. Petitioner complained of this to Home Minister and

Sho, P.S. Naraina. On the same date G. Dass lodged report at. Pp Mayapuri, claiming to have agreed to purchase the property from S.S. and to

have paid earnest money of Rs. 22000.00 and admitted that petitioner was in possession. Between July 3 and 13, S.S. sent number of complaints

to various authorities of his apprehension that there was a conspiracy to wrongfully and forcibly dispossess him from the property with the

connivance of the police and to implicate him in false criminal cases. A complaint was also made to Deputy Commissioner of Police (Vigilance)

against police officers. Instead of relief proceedings u/s 107 Cr. P.C. were initiated against him and his sons. On 14.7.81 G. Dass reported to

police Balhar Singh Vs. Goverdhan Dass etc. that petitioner wanted to take possession of the plot from him forcibly. On this S.I. Didar Singh sent

a report which was followed by Kalandara submitted to Sdm u/s 145 Cr. P.C. on the same date. Petitioner claims that he was forcibly &

wrongfully dispossessed by Goverdhan Dass etc. on 16.7.81 from the office room of property on which he reported to the Police Commissioner.

There after on 19.7.81, Omi, Nathu etc forcibly entered the plot and were accompanied by a police officer and a constable. The intruders had

been nabbed by the public but the police party got them extricated, and ran away from the scene leaving their cycle behind. A report of this

incident was made to flying squad. On 20.7.81 the petitioner sent detailed report of the incident, to the Lt. Governor, P.M., Comm. of Police, Dcp

South and Dcp Vigilance. On 21.7.81, the Sdm made a composite order u/s 145(1) and 146(1) Criminal Procedure Code . Pursuant to this order

of attachment the police sealed, the property on 23.7.81 but before sealing an attempt was made by the police to throw away movable goods of

the petitioner allegedly with a view to destroy evidence of possession of the petitioner. The family members of the petitioner and public thwarted

foul attempt. Inventory of goods of B.S. was not made by Police on 23.7.81 Next day petitioner got the site photographed. On 27.7.81 petitioner

complained to Sdm that G. Dass attempted to break Seal on 25.7.81, to remove petitioner"s goods to destroy evidence and asked for preparation

of inventory of goods. Newspaper Pratap" on 27.7.81 reported the incident of police connivance in its paper. On 28.7.81, petitioner sued police

officers & others for injunction. Sdm on 30.7.81, ordered preparation of inventory. Parties then filed their w/Ss. Sdm then held the enquiry and

dealt with the case by an elaborate order of 19.3.83 and concluded that he was unable to satisfy himself as as to which party was in possession on

material date and directed that property should remain sealed till decision of parties rights by a competent court. Petitioner filed revision against this

to High Court. After giving above facts in detail, Judgment proceeds :)

(2) I have heard learned Counsel for the parties at considerable length. I also allowed both the parties to produce additional material in support of

rival contentions. While Balhar Singh produced copies of number of documents consisting of part of the official records either of proceedings filed

in Courts between him and S.S. or of complaints and reports to the police as also against Police officers in relation to their conduct of the present

proceedings. G. Das, on the other hand, after a number of adjournments produced a copy of an undated application to Desu for restoration of

power connection, a cyclostyled letter of June 25, 1981 in reply from Desu and a copy of a further letter to Desu of June 26.6.81. The first and

last of these bear the endorsement of Desu with regard to their receipt. The endorsement in the first is of date line 11.6.81. The first and last of

these documents mention that possession of the property has been handed over to him by S.S.

(3) It was primarily for the trial court to find, after giving a reasonable opportunity to the parties of placing both oral and documentary evidence

before it, which, if any of the parties was in actual physical possession on the material date and if on the material such a finding was not possible to

direct the property to remain in judicial custody till the determination of the material by a civil court. The trial court has examined the entire material

and written a rather elaborate judgment expressing on its assessment of the material its inability to return a finding in favor of one or the other of the

parties even though it has in unequivocal terms condemned the claim of G. Dass as a ""concoction"" and the contention of S.S. that he had handed

over possession of property at the time of the agreement to G. Das as ""unreliable"". It has nevertheless further held that the evidence produced by

Balhar Singh himself is insufficient and the circumstances that he has brought out in cross examination or on the basis of past record of proceedings

between Balhar Singh and S.S. on the one hand and the various reports of Balhar Singh to the police and against the police officers on the other by

themselves would not constitute conclusive evidence of Balhar Singh's exclusive physical possession of the entire property. A civil court is already

seized of the matter at the instance of G. Dass pursuant to the Magisterial order. Ordinarily, Therefore, this Court would be reluctant to interfere

either in the exercise of its revisional or inherent jurisdiction, even if this Court was 1985. Rajdhani Law Reporter 317 inclined to take a view, on

an assessment of the existing material, which may be at variance with the way the trial court has looked at the matter. But unfortunately, for G. Das,

as indeed, the police officers concerned in the matter, there are unusual features which would justify not only interference with the impugned order

but would also call for a censure, albeit a strong censure, of the conduct of G. Dass and number of police officers, who were concerned with the

proceedings leading to the Kalandara. The material on record, irrespective of whether it is produced by one party or the other or consists of police

records and irrespective of the fact whether it consists of oral evidence of one witness or the other or is direct or of a circumstantial nature,

establishes beyond doubt that Balhar Singh for whose eviction, efforts were being made by S.S. for a long time was in actual physical possession

of the office room until 16.1981 and of the rest of the property at all material times until he was forcibly and wrongfully dispossessed under the

cover of an attachment order as a part of a conspiracy between G. Das and Police officers concerned to get rid of Balhar Singh's possession. It is

unfortunate that the learned Magistrate misdirected himself in making a distinction, as it were, between material placed by different parties and in

ignoring that of the unimpeachable material on record leads only to one conclusion that Balhar Singh was in possession on the material date and has

been in exclusive possession of the entire property for years, it is absolutely irrelevant if this evidence was produced by Balhar Singh or not,

whether it was oral in nature or documentary evidence and whether it was direct evidence or of circumstantial nature. It is also unfortunate that the

learned Magistrate has ignored the police report of G. Das himself and of the course of proceedings between S.S. and Balhar Singh taken at a time

when Balhar Singh could not have anticipated that after years, he would be a victim of a fraud perpetrated on him to deprive him of his rightful

possession. The learned Magistrate also conveniently ignored the hidden hand of the Police behind all that had happened even though it must be

said in all fairness to him that he has rightly and unequivocally condemned the contention of G. Das as a ""concoction"" and described S.S. as an

unreliable"" witness but it is extremely unfortunate that even after having completely nailed the white lies of S.S. and G. Das by confronting them

with the genuine official records, he observed without any support and even conviction that both the parties were ""probably"" in possession of part

of the property and he was, Therefore, unable to decide which of the parties was in exclusive possession of the entire property on the material

date. The learned Magistrate also unjustifiably demurred in ignoring unimpeachable material on record which clearly falsified the claim of G. Das

and S.S. that any part of the property was outside the arrangement under which B.S. held the premises or that any part of the property could have

been in the possession of G. Das before July 16, 1981. I would presently deal with the material to show how on the material on record, it was

fully established that Balhar Singh was not only in exclusive physical possession of the office room until 16.7.81 when he was wrongfully and

forcibly dispossessed from it and of the remaining property until. the property was sealed but had been in possession of the entire property for

years and was, Therefore, an unfortunate victim of a fraud perpetrated on him with the active collusion of the police officers concerned.

(4) The Court seized of proceedings u/s 145 of the Cr Pc is required to determine which, if any, of the parties was in actual physical possession or

be deemed to be in such possession at a particular point of time after granting the parties concerned an opportunity of being heard. The case set up

by B.S. before the Court was that he had been in actual physical possession of the property since 1976 under an arrangement between him and

S.S. and continued to be in such possession until he was physically removed from there under the cover of the attachment order issued by the

Court in the proceedings except the office room from which he was wrongfully and forcibly dispossessed on 3981. It was further his case that S.S.

wanted to emigrate to Canada and being desirous of disposing of the property before such emigration had been adopting various devices from time

to time to evict him and having failed in the various Balhar Singh Vs. Goverdhan Dass etc. proceedings between the parties, to achieve the object,

agreed to transfer the property to G. Das apparently leaving it to G. Das to use his own devices to dispossess B.S. It was also the case of B.S.

that he was in possession of the entire property measuring 75 x 20" consisting of the plant as well as the office room and that no part of the

property was in possession of S.S. when he entered into the agreement with G. Das. On the other hand, it was the case of G. Das that when he

entered into the agreement with S.S. the vacant possession of the entire property was delivered by S.S. to him, implying thereby that Balhar Singh

had at some stage surrendered the possession of the property in favor of S.S. In the alternative, it was the case of G. Das that one room in the

property was in possession of S.S. and G. Das was put in possession of that part of the property and that at the material time, G. Das was, in any

event in physical possession of the room even though B.S. may have been in possession of the rest of the plot and the factory. S.S. who appeared

before the Court made a self-serving statement that when he entered into the agreement with G. Das, he delivered vacant possession of the entire

property to him.

(5) One aspect of the controversy before the Court was if the arrangement between B.S. and S.S. extended to the entire plot measuring 75 ft. x.

20 ft. and the office room or was it confined to a. part including the plant of the property. Balhar Singh relied on the various proceedings in

different courts between him and S.S. from March, 1979 onwards in support of the contention as. to the extent of the area which was subject-

matter of the arrangement between the two and it is interesting to notice that in all those proceedings Balhar Singh consistently claimed that the

entire- property was subject-matter of the arrangement and this fact was at no stage denied in those proceedings by S.S. Copies of these

proceedings were produced before the court below as indeed, in this Court and they clearly bear out what B.S. contends. B.S. could not have

anticipated in 1979 or 1980 when some- of these proceedings were filed that he would need the support of these records to reinforce his claim as

to the extent of the area under arrangement. The only conclusion that was, Therefore, possible on this material was what Balhar Singh consistently

claimed. No further material was either necessary or called for, for B.S. to establish that the arrangement and his possession extended to the entire

property throughout. The second controversy was if having been in possession of the entire property under an arrangement with S.S. Balhar Singh

ever surrendered whole or any part of it to S.S. as was contended by G. Dass, and S.S. and which could form a basis for the recital in the

agreement between S.S. and G. Das that the vacant possession of the entire property had been delivered by S.S. to G. Dass on the date of the

agreement to sell. On this aspect of the case, the trial court disbelieved G. Das, S.S. as also the recital in the agreement and condemned the

contention of G. Das in that behalf as a ""concoction"" and described S.S. as ""unreliable"". That B.S. who had been fighting a prolonged battle against

S.S. to retain the property, and had filed a number of proceedings in various courts to defend his right and had been approaching various executive

authorities, including the Lt. Governor of Delhi and the Police could not possibly have surrendered the premises or any part thereof further

reinforces the conclusion arrived at by the trial court that the contention in that behalf by G. Das and S.S. was false and was intended to make a

basis for a false report to the Police that B.S. had broken into a part of the premises to make out a case for police and court's intervention u/s 145

of the Code The third aspect was if G. Das was in any event in possession of office room and as to whether he came by that possession by

wrongfully and forcibly dispossessing B.S. within two months of the initiation of proceedings. On this aspect, the incontrovertible evidence on the

record was the report of G. Das himself of 2.7.81, in which he categorically admitted that he had purchased the plot and that on the spot B.S. was

in possession. It was not disputed that S.S. had since emigrated to Canada having taken from G. Das the Substantial amount for the property

presumably leaving it to G. Das to procure possession from B.S. through such devious devices as he could adopt with or without Police assistance

to take possession of the property. If the case of B.S. that he had throughout been in physical possession of the property, until he was

dispossessed from the office room on 1985. Rajdhani Law Reporter 317 16.7-81 and from the rest pursuant to the order of attachment was

established by the past history of the dispute between B.S. and S.S. the court's rejection of the contention set up by S.S. and G. Das and G.

Das's own report of 2.7.81, one fails to understand how it could possibly be said that Balhar Singh had nevertheless failed to establish that he was

in physical possession until he was wrongfully dispossessed from a part on 16.7.81 and removed from the rest pursuant to the attachment order.

The observation of the trial court that the previous history of litigation between B.S. and S.S. was merely in the nature of a circumstantial evidence

of the extent of the property which was subject-matter of the arrangement and that B.S. could not succeed merely because the case being set up

by G. Das was held to be a concoction in the absence of direct evidence by B.S. of his actual physical possession in the circumstances appears to

be wholly perverse. If the material on record irresistibly leads to the conclusion, which Balhar Singh intended the Court to arrive at, it was immaterial

if the evidence was direct in nature or merely circumstantial. It was equally irrelevant if the material had been brought on record by one party or the

other or if the material consisted of admission of a party of the case of his adversary .On this material, the only possible conclusion was that B.S.

had been in actual physical possession of the entire property until he was thrown out of a part of the premises after July 2 report and of the rest

pursuant to the order of attachment. The report of July 2 by G. Das clearly clinches this aspect of the matter. In this report, there is a categorical

admission by G. Das that Balhar Singh was in possession. This is reinforced by the report lodged by B.S. on July 16 that he had been wrongfully

and forcibly dispossessed of one room by G. Das with the help of the police. This clearly falsifies the police report and Kalandara of July 14, that

there was any dispute with regard to actual physical possession of the property. Kalandara also mentions dispute with regard to ""ownership"" of the

plot which again was not only false but wholly irrelevant. Neither the Court nor the police was concerned with the ownership of the property and it

is a common case that B.S. had at no stage claimed any proprietary interest in the property. Be that as it may, the report, of July 2, leads to the

inevitable conclusion that Balhar Singh was dispossessed from the office room either on July 16, as claimed by him, or earlier but only after July 2,

and the preliminary order having been made on July 21, B.S. would, in any event, be deemed to have been in actual physical possession and there

was, Therefore, absolutely no basis for any finding by any tribunal, duly instructed in the law, on this material that there was any doubt as to which

of the parties was in actual physical possession or be deemed to be in actual physical possession of the whole or any part of the property. The

finding of the trial court is primarily the result of grave error in overlooking, the report of July 2. to an extent the trial court was influenced by the

statement of Dhan Prasad, chowkidar, who was described by the trial court as the only independent witness. The case, sought to be set up by G.

Das having been described as a ""concoction"" and a ""fabrication"" could not possibly have been salvaged by the statement of his own chowkidar and

it passes one's comprehension how G. Das's chowkidar could be sublimated to the position of an ""independent witness .He was at the beck and

call of G. Das and has throughout been in his employment. No one would have expected him to make any statement which would have been

contrary to the case sought to be set up by G. Das in the proceeding. The material on record, Therefore, must lead to the inevitable conclusion that

the property was in the actual physical possession of B.S. at the material time and he was entitled to the possession of the property being restored

to him.

(6) A contention was raised on behalf of G. Das that he could not produce any material in support of his claim as no such opportunity was granted

to him. This contention is wholly baseless and is belied on a reference to the order sheet of the proceedings. By an order of 10-11-81, it was

directed by the trial court that the evidence of Goverdhan Das be recorded. In any event, at no stage had Goverdhan Das asked for any further

opportunity to produce any material. In fact, he had no material to produce in support of the claim which has been rightly adjudicated as a

concoction"". The only material he could produce in the trial court consisted of documents showing that he had placed order for certain material to

be delivered at the address of the disputed property. Bat this. was the easiest material to obtain if he was planning as he certainly was, on the

material available, to take forcibly possession of the property and to bolster up a false case of actual physical possession. I gave him an

opportunity in this Court and after number of adjournments sought by the Counsel, all he could produce was an application to Desu authorities for

sanction of an electric connection purporting to bear an endorsement that an application had been made. While the application for a power

connection, the reply of Desu to it and a further letter to Desu bear the endorsement of Desu prima facie these documents must have been

procured subsequently in collusion with the staff of Desu because if these documents were in possession of G. Das during the pendency of the

proceedings in the trial court, one would have expected a mention of the transaction and of the documents in the written statement filed by

Goverdhan Das. It is not a sheer coincidence that these documents never saw the light of the day until they were produced in this Court and that

too after quite a few adjournments were sought for the purpose. There was no Explanation as to why if these documents were genuine and

available, they were not filed before the trial court and no mention of these was made in the course of the proceedings in the trial court. In any

event, if G. Das had agreed to purchase the property in the hope that he would by one device or another get physical possession of the property

from B.S., a mere application for a power connection could have perhaps provided some reinforcement to the claim that he was in actual physical

possession but these documents would not by themselves show, much less establish, that he was in actual physical possession of the property or

any part thereof. The self-serving averment in the application on that he was in actual physical possession is of hardly any avail in the circumstances

and could not further the case of G. Das which has been rightly rejected by the trial court as a "fabrication".

(7) It was next contended on behalf of G. Dass that B.S's possession should not be recognised in that the arrangement between him and S.S.

could not be treated as a "tenancy" and it was a mere "license" to work the factory in consideration of monthly payment to be made by B.S. It was

further urged that, in any event, prior permission of appropriate authorities was necessary before valid authorisation by S.S. in favor of B.S. This,

contention it wholly irrelevant. In proceedings u/s 145 of the Code, the Court is not concerned with the title to or interest in the property or with

the nature of the possession. The Court is only concerned with the actual physical possession. The actual physical possession pursuant to an

arrangement between S.S. and B.S. irrespective of its nature, is fully established. No more was necessary for the present proceedings. If and when

G. Das is able to perfect his title to the property, he would be entitled to seek appropriate relief from a Court or a Rent Controller for the eviction

of B.S. in accordance with law. The outcome of the present proceedings would not debar G. Das from contending that B.S. was not entitled to

possession of the property or was liable to be evicted there from or that arrangement between S.S. and B.S. was invalid, illegal or honest and

conferred no right or interest in B.S. in relation to the property. These are all matters which are foreign to an enquiry u/s 145 of the Code.

(8) That leaves for consideration the questions raised on behalf of B.S. as to the resumption of appropriate Vigilance proceedings against the

Police officers concerned with the matter for which B.S. has been agitating since the day pressure started mounting on him to submit to the illegal

demand of G. Das and the claim for the prosecution of G. Das for perjury and use of fabricated documents in support of his claim both in the

Court below and in this Court.

(9) As for the Vigilance enquiry against the police officers concerned with the matter. there is abundant evidence on the record that B.S. has

throughout been giving vent to his apprehensions that G. Das, and before him his associate, Gulab, who were negotiating for the purchase of the

property, would either cause physical harm to him or would deprive him of the property forcibly with or without the connivance of the Police. He

had made numerous complaints against various Police 1985. Raj. L. R 317 officers to the Lt. Governor and other authorities and at one time a

vigilance inquiry was ordered against some of the police officers but it appears that it was eventually soft-pedalled. I had requisitioned the vigilance

proceedings and. the records have since been produced before me. In view of my finding that B.S. was a victim of a conspiracy to physically

throw him out under the cover of an attachment order at the instance of G. Das with the active collusion of the police officers concerned, it would

be desirable and proper that the vigilance inquiry is resumed at an appropriate level so that the officers, who have been guilty of collusion, are

appropriately brought to book. Let a copy of the order be forwarded to the Commissioner of Police with the vigilance file lying in this Court with a

direction that the Commissioner of Police would consider what action, if any, is justified against the officers concerned for their complicity in the

unfortunate circumstances in which B.S. had been deprived of his lawful possession of the property.

(10) As for the prosecution of G. Das, his claim has already been condemned by the trial court as a ""concoction"" and I have no hesitation in

strongly upholding that finding of the trial court. He has certainly set up a false case that the possession of the property had been delivered to him

by S.S. at the time of the agreement or that he, ever came by possession of the property or any part of it at any stage before the proceedings were

initiated. He has also produced in this Court certain documents purporting to be his application for grant of an electric connection with some

endorsement by the municipal authorities which prima facie appear to have been procured subsequently because if he had made any such

application and was in possession of any endorsement by the municipal authorities in respect of the material period, such material would not have

seen the light of the day for the first time only in this Court. To prove that he had applied for an electric connection was in any event the easiest

thing to do but even so this material was never placed before the Court below either in his written statement or otherwise and was never mentioned

in his written statement but this, to my mind, is not a material document because merely because he had applied for an electric connection would

be no proof of the fact that he was in possession. He could have created such evidence to reinforce his claim of possession even if he was putting

up a false case that he was in possession. The position of some of the other documents like order forms would be no different. It is the easiest thing

for G. Das to have ordered supply of goods at the address of the disputed property from any buyer. Even so, I would have ordered his

prosecution but for the fact that Das and B.S. carry on business in the same vicinity. Das has agreed to purchase the property. His title to it

would perhaps be perfected in course of time, B.S. would have to deal with him as owner and or landlord as a successor in interest of S.S. after

the instrument has been duly registered. The present proceedings have generated enough hostility between them. Civil proceedings are already

pending between them. Any prosecution is likely to create further bad blood which would perhaps be not conducive to their further relations

particularly, in the present environment of mistrust. I have, however, absolutely no doubt in my mind that the three documents filed by Das in this

Court relating to the request for resumption of power connection were procured subsequently with the collusion of the municipal staff, and it

would, Therefore, be reasonable and proper that an appropriate enquiry is made into the matter at the municipal level. Let the three original

documents be sent to the Commissioner of Mcd in a sealed cover Along with a copy of this judgment. The commissioner would have an

appropriate enquiry instituted at an appropriate level if the endorsements on these documents were made contemporaneously as they purport to be

or were procured subsequently, and in particular, if their receipt and dispatch are duly reflected in the receipt and dispatch register of DESU. Cri.

Misc. 1516/84, 1946/84 and 1947/84 are dismissed.

(11) In the result, the petition succeeds and the impugned order is quashed. In view of my finding that the property was in the exclusive physical

possession of B.S. on the material date, the property should be released to him forthwith after making an inventory of the movable goods.

(12) In the last couple of years, I have had occasion to deal with a number of cases arising Balhar Singh Vs. Goverdhan Dass etc. out of

proceedings u/s 145, Cr. PC. Each of these cases turned on their own facts but there were certain common features in that the process of the

criminal court was grossly misused by the owner of a property or a prospective buyer to get rid of an inconvenient occupant, whether a

trespasser or a lawful tenant, otherwise than in the ordinary course of law whether with the collusion of the Police or in spite of them. I have got an

impression from these proceedings that on account of the prolixity and cost of civil proceedings, there is a growing tendency to resort to criminal

proceedings. This is what I said in the case of Dwarka Singh Chauhan Vs. State and Others, Before parting with this matter, it is necessary to call

attention to the increasing resort to the criminal court system in disputes relating to immovable property to which I made a passing reference in the

earlier part of this order. Market value of immovable property has increased manifold in Delhi during the last decade. or so. Possession of

immovable property is an important attribute of its ownership and the value of possession of immovable property alone has increased by

astronomical proportions. Vacant possession of immovable property adds an entirely new dimension to any transfer in its title. It is, Therefore, not

surprising that there is extensive litigation with regard to the immovable property, including its possession, between landlords and tenants, between

landlords and licensees, between co-owners of the property, inter se, as also "between owners of the property and persons who are otherwise in

peaceful possession of it and this frequently involves not only the owners but the intending buyers of such property. It is not uncommon for the

intending buyers to agree to buy the property on their own terms on the condition that they would be able to adequately deal with the occupants,

whatever may be the nature of their occupation. It is well known that for a variety of reasons, the civil court system has ceased to be effective in

giving relief in such cases partly because of the heavy costs but mainly because of the inordinate delay involved which operates as a virtual denial of

justice. In any event, the protracted proceedings in civil courts have ceased to be even an instrument of mild pressure on the wrong doer. The

result is that the civil litigants are fast losing faith in the process of the civil court and there is a growing tendency to invoke the jurisdiction of the

criminal court system of the police intervention, so as to cut costs as also ensure expedition. This may be legitimately so long as a dispute

constitutes a cause for criminal action and legitimately falls within the competence of the police administration and of the jurisdiction of a criminal

court. There is, however, a danger that there may be attempts to invoke the intervention of the police and to invite the process of the criminal court

even in cases where such invocation or intervention may be wholly uncalled for and it is in such cases that there is a real danger of the unscrupulous

litigant gaining access to the police and criminal court system by devious methods, not excluding the distortion of facts, perjury and even

manipulation of the police, as well as the magistracy. Unfortunately, during the recent years, it has generally gone round that it is comparatively,

easy to manage the police at certain levels and to even manipulate the magistracy, to an extent. Such an impression, if well founded, would certainly

call for introspection among the litigants, as well as the lawyers, and strict vigilance on the part of the police administration, as well as the courts,

including the magistracy and the courts to which they are subordinate, in dealing with this class of criminal litigation." (In para 27, warning &

suggestion made in 1985 Raj. Lr 43 are reproduced).

(13) The present case reinforces fully the impression that I carried of the gross misuse of the process of the criminal court from the earlier

proceeding. It is time the authorities take a second look at S. 145 and, in any case, streamline the Police set-up charged with the duty of

administering the provision. There is also need for prompt disciplinary action against Police officers who may be found guilty of collusion in the

cases of illegal ouster from immovable property.

(14) Before parting with this case, I must record my appreciation of the thoroughness with which Counsel for the petitioner pursued the

proceedings in the trial court and in this Court, as indeed, with the various Police authorities and, I am sure, but for his dogged pursuit of the matter

at practically all levels, B.S. had as good as lost his valuable right of possession of property which was the only source of his livelihood .Petition

allowed. Gay Electronic Vs. Karnal Ccc Stores we remand the case to the High Court for decision of the appeal and the cross objection on

merits. The appeal is accordingly allowed to the extent indicated above with no order as to costs. (In para 42 a plea that legislature should allow

owner to sue for personal need of Commercial premises has been made).