

(1958) 09 KAR CK 0004

In the Karnataka High Court

Case No : Criminal Revision Petition No. 285 of 1958

Alakal Senappa and Others

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 02-09-1958

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 522
Penal Code, 1860 (IPC) — Section 323, 447

Citation : AIR 1960 Kar 24 : (1960) CriLJ 258

Hon'ble Judges : A. Narayana Pai, J

Bench : Single Bench

Judgement

(1) The petitioners are the accused in C. C. 30 of 1957 on the file of the sub Divisional Magistrate of Hospet. Petitioners 1 to 5 have been convicted of an offence u/s 323 of the Indian Penal Code and each of them has been sentenced to pay a fine of Rs. 25; all the six petitioners have also been convicted of an offence u/s 447 of the Indian Penal Code and each of them sentenced to pay a fine of Rs. 50. The convictions and sentences have also been confirmed by the learned Sessions Judge of Bellary on appeal by the petitioners.

(2) The complainant, who is the 2nd respondent before me, was a tenant under one Raghavendrachar, who is D. W. 1 in the case. It is the complainant's case that he has been in possession for a number of years as tenant under Raghavendrachar. On 20-2-1957 Raghavendrachar executed a sale deed in favour of the 1st petitioner in respect of the land under the occupation of the complainant. On 22-2-1957, that is two days after the sale, the incident complained of took place in respect of which the accused have been convicted and sentenced as above. In their defence against the case of trespass, the case of the accused was that immediately after the sale deed on 20th February itself the 1st accused and his vendor Raghavendrachar went to the land and the complainant voluntarily surrendered possession. This plea has been rejected by both the Courts and the accused have been convicted of the offence of trespass u/s 447 of the Indian Penal Code. The case of hurt has been accepted by both

the courts, but only the 6th accused has been acquitted for lack of evidence. There is also a finding that the complainant's case that the 1st accused stamped on his foot with his chappals and the complainant's foot was injured thereby is false; the doctor's evidence is that the wound or injury on the foot of the complainant appeared to have been self-inflicted.

(3) In the trial court an application appears to have been made by the complainant for a direction for restoration of possession to the complainant under the provisions of Section 522 of the Code of Criminal Procedure. This application was not disposed of and it is the complainant's case that the reason why it was not so disposed of is that the accused went up on appeal soon after their conviction by the Magistrate and therefore the Magistrate did not proceed to deal with the application. The learned Sessions Judge while confirming the conviction has made such a direction and ordered that the possession of the land in question should be restored to the complainant on the finding that he had been dispossessed by force by the 1st accused.

(4) The revision petition is against the order of the learned Sessions Judge. While admitting the revision petition on 29-7-1958 I made the following observation:

"There are no grounds to interfere with the conviction. The question, however, whether circumstances existed to justify an order under S. 522 Cr. P. C. may bear further examination. The Criminal Revision is admitted only on that point."

The only point for consideration, therefore, in this revision petition is whether the order made by the learned Sessions Judge under Sec.522 of the Code of Criminal Procedure can be sustained in the circumstances of the case.

(5) Under S. 522 of the Code of Criminal Procedure, whenever a person is convicted of an offence attended by criminal force or show of force or by 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, order the dispossessed person to be restored to possession. Such an order can be made by the trial court either while convicting the accused person or within one month from the date of conviction.

According to sub-S. (3) an order under this section may be made by any court of appeal, confirmation, reference or revision. Although there was some doubt as to whether the period of one month applies to the courts referred to in sub-section (3), it is now settled that the period of limitation applies only to the trial court and that an order for restoration may be made by any of the courts mentioned in sub-S. (3) at the time of disposal of the appeal, reference or revision before it.

(6) Before an order under S. 522 can be made three conditions must be satisfied :

(1) The accused must be convicted of an offence attended by criminal force or show of force or by criminal intimidation:

(2) the court must be of the opinion that the accused dispossessed another person of Immovable property by such force, show of force or criminal intimidation, and

(3) the court, in the circumstances of the case, must think fit to make an order for restoration of possession.

(7) The first two conditions must necessarily be satisfied before an order can be made and the third condition merely invests the court with the discretion whether or not to make an order.

(8) It must be pointed out that S. 522 does not require that force or show of force or intimidation should necessarily be one of the ingredients in the offence with the commission of which the accused has been convicted. It is enough that the commission of the offence is attended by force or show of force or intimidation. The words "attended by" may include not only an act done simultaneously with another act, but also an act done immediately after another act.

So, if the commission of an offence is immediately or shortly afterwards followed by force or show of force or intimidation, the case will be covered by this section. It is so observed by a Bench of the Allahabad High Court in *Mahabir v. Rex* AIR 1949 All 228. It is however clear from these observations that the commission of the offence and the force, show of force or intimidation referred to in this section must be so connected as to constitute more or less a single event or a single transaction and the dispossession must be a direct consequence of the force, show of force or intimidation.

In the Allahabad case mentioned above the accused and his accomplices having entered upon the land did not quit the land when the true owner protested against unauthorised entry and made ready to fight the true owner. In these circumstances the Bench held that the case fell within the four corners of S. 522 of the Code of Criminal Procedure. The Bench further observes that the show of force may consist in the physical presence of the accused, his servants or companions in such a way that the true owner is put in fear that if he tried to regain possession by force he will be met by force.

One of the witnesses in the case stated that the accused were ready to fight, another stated they did not listen to the protest of the complainant with the result that the complainant had to go away quietly leaving the accused in possession of the field. The Bench observed that in such circumstances, the complainant would not have gone away quietly unless he feared use of force if he took physical action to recover the land.

(9) In *M. V. Bean Kutty Haji v. C. I. Raman* AIR 1949 Mad 191, Horwill J. observes that the object of this section is to prevent any person gaining wrongful possession of the land by his own unlawful and forcible acts. In other words the principle of civil law that a person in peaceful possession land should be

protected against dispossession by requiring whoever claims the right to possession against him to go to a competent court and dispossess him only in due course of law is sought to be enforced by empowering criminal courts under S. 522 to direct restoration of possession with a view to see that no man flouts the law and relies upon physical force to achieve his ends.

(10) The first point for inquiry in this case is whether the first two conditions mentioned above are satisfied. The courts below in their orders have no doubt, made strong observations that the accused have taken the law into their own hands and forcibly dispossessed the complainant. They have not, however, discussed the evidence bearing on the question relevant to S. 522 and come to the conclusion whether the evidence establishes that the dispossession of the complainant was by force or show of force or by criminal intimidation.

It has, therefore, become necessary to examine the evidence in this case. It is obvious that when the evidence was first let in, the parties must have been more interested in proving the offence and pointed attention does not appear to have been directed towards establishing the conditions necessary for obtaining an order of restoration of possession under S. 522. However, the very evidence which supports the conviction will in a large number of cases support an order under S. 522 also.

It is because force or show of force or intimidation need not necessarily be an ingredient in the offence, there may be cases where the evidence may be absolutely silent on the question whether the commission of the offence was at all attended by force, show of force or intimidation. Analysing the evidence in this case in the light of the principle already mentioned, the following circumstances are clearly established.

It is an admitted fact that the complainant was in possession as tenant under D. W. 1 up to the 20th of February, 1957. It is admitted that the 1st accused did not take any legal proceedings to obtain possession from the complainant. His case that there had been a voluntary surrender by the complainant on the 20th of February, 1957 has been disbelieved by both the courts. That he and his companions, accused 2 to 6, were on the land two days after the sale trying to plough the land is established.

When the complainant and his companions came and protested, the accused is said to have asserted this title to the land and stated that the complainant would have no say in the matter. That there was a beating by the accused and his companions of the complainant and his companions is clear from the evidence. Although no injuries on the complainant have been established, there is evidence to show that he was pushed and that he fell down in the field. Thereafter the complainant and his party left the field and never entered the field again.

The complainant himself as P.W. 6 states that because the 1st accused kept watch over the garden stating that he had purchased it and because there was quarrel he did not enter the garden subsequently. His nephew, P. W. 4, states

that they have not entered the land after they were dispossessed forcibly on the 22nd of February, 1957. When there is so much evidence, it is difficult to say that the courts below were wrong in making the observation that the complainant was dispossessed by force.

When two courts have come to that conclusion on facts, I am disinclined to interfere with that conclusion in revision. I, therefore, accept the finding that there has been dispossession by force and hold that circumstances did exist justifying the passing of an order for restoration of possession under S. 522 of the Code of Criminal Procedure.

(11) There only remains the question whether the lower court has rightly exercised its discretion in making the order. It is argued that after the incident the complainant has filed an application before the Amildar under the provisions of the Mysore Tenancy Act praying for restoration of possession on the ground that he has been illegally dispossessed. No final orders have been passed by the Amildar on this application, nor could be proceed with the matter for the reason that the 1st accused raising certain technical objections has filed a writ petition before this court questioning the jurisdiction of the Amildar and questioning the validity of the Mysore Tenancy Act and has obtained a stay of further proceedings before the Amildar. Reliance is placed on the observations contained in Yusuf Cossim Vs. Maya Rani Sen Gupta and Another, , to the effect that if there is likelihood of conflict of authority and decision, the criminal court should exercise discretion against passing an order for restoration. In that case the two accused, who were refugees from East Pakistan, were convicted of an offence of trespass by squatting on the property of the complainant.

It was argued that the complainant taking advantage of a special statute, viz. West Bengal Act XVI of 1951, had gone to a competent authority under that Act and obtained an order for eviction of one of the accused from his premises, when the State Government had provided her with alternative accommodation under the Act, and that, therefore, on the passing of such an order the Magistrate lost jurisdiction to pass an order under S. 522 of the Criminal procedure Code.

There was an appeal against that order then pending disposal. There was no such order regarding the other accused in the case. On these facts the Calcutta High Court made an order that the complainant is to be restored to possession so far as the accused in respect of whom there was no order under the Bengal Act XVI of 1951 was concerned and that he should be restored to possession as far as the accused in respect of whom there was such an order was concerned, only after the appeal against that order is disposed of.

It will be clear, therefore, that the Calcutta High Court considered the existence of an order by another authority as furnishing the likelihood of a conflict of authority if the criminal court passed another order under S. 522 of the Code. In the absence of any such order there would be no likelihood of any such conflict of authority. In this case although the complainant has gone to the Amildar, no

order has been passed in his favour and the passing of any such order is itself postponed by the objections of the 1st accused and by the order of stay obtained by him pending his writ petition before this Court.

In the circumstances, therefore, I do not think that there is material to hold that the learned Sessions Judge was wrongly exercised his discretion under S. 522 of the Code.

(12) The revision petition is, therefore, dismissed. The stay of the Sessions Judge's order for restoration of possession granted by this court in Criminal Petition 406 of 1958 will also stand vacated immediately.

(13) Revision dismissed.