

(1994) 05 DEL CK 0015

In the Delhi High Court

Case No : Criminal Writ Appeal No. 747 of 1993

Anju Devi

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 18-05-1994

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (1994) 3 AD 53 : (1994) 2 Crimes 691 : (1994) 55 DLT 167 : (1994) 3 RCR(Criminal) 71

Hon'ble Judges : Y.K. Sabharwal, J;Devinder Gupta, J

Bench : Division Bench

Advocate : S.N. Gupta, P.S. Sharma and V.B. Andley, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) Petitioner is wife of Ved Prakash, Respondent No.4. Respondent No.3 - Smt. Mohini Devi is mother of Ved Prakash, Commissioner of Police and Station House Officer, Police Station Jahangirpuri are respondents land 2 respectively. The petitioner, inter-alia, seeks issue of writ of mandamus directing respondents land 2 to put her back in possession of premises No.1731-K-Block, Jahangirpuri, Delhi, claiming that she has been residing in the said premises since November, 1989 and was illegally dispossessed on 30/08/1993 as a result of connivance and collusion between respondents 3 and 4 and the Police. She also seeks registration of First Information Report against the culprits and enquiry/action against the Police officials who colluded and connived with respondents 3 and 4 in dispossessing her.

(2) Petitioner and respondent No.4 were married on 13/05/1989. It is not disputed that since about November, 1989 petitioner has been living in the premises in question and also that matrimonial disputes started between the husband and the wife sometime in the year 1989 itself. In the reply filed by respondents 3 and 4, their stand is not that prior to 30/08/1993 they were living in the premises in question. Their stand is that the possession of the house was

delivered to them on 30/08/1993 and since then they were living in the house. During course of hearing, Mr.Andley, learned Counsel for respondents 3 and 4 on instructions from his client told us that his clients had not been living in the premises in question for last about four years prior to 30/08/1993. Therefore, admittedly, respondents 3 and 4 have been living in some different premises and not in premises in question before 30/08/1993. Before we consider the stand of the respondents as to the manner in which respondents 3 and 4 came into possession on 30/08/1993 we may notice briefly the background of the case including the disputes which were pending between the petitioner and respondents 3 and 4 before 30/08/1993 as that will demonstrate, to a large extent, the role played by the police in the entire episode. First, we will briefly notice as to what petitioner says in the writ petition.

(3) After the marriage she went to matrimonial home at No.2 Gali Mata Wali, Babaji Ka Gher, 402, Teliwara, Delhi, and stayed there for about a month. On the date of marriage respondents 3 and 4 and other relatives had not taken with them the dowry articles on the pretext that the articles demanded by them had not been included and that they will take the complete dowry articles only when all the demanded articles were given. There were taunts and maltreatment to her at the hands of respondents 3 and 4 and other relations. Keeping in view the persistent demands her parents arranged some of the articles demanded by them and also subsequently paid cash of Rs.10,000.00 for the purpose of separate house where she was to reside with her husband separately. A list of dowry articles given on 1/10/1989 was duly signed by both the parties (copy annexed). That inspire of articles mentioned in the list having been given the lust for money still subsisted and she was again tortured to get more and more. That with the interference of some of the relations from both the sides the petitioner and her husband started living separately at the premises in question for purchase of which Rs.10,000.00 were paid by the parents of the petitioner. Sometimes thereafter the husband again deserted her and started residing with his parents on the pretext that petitioner must bring a Scooter for him. She was not provided with food and clothing besides other necessities of life and she filed a petition for maintenance which is pending before the Competent Court. On two occasions i.e. on 1/01/1990 and 1/03/1990 respondents 3 and 4 Along with other relatives came to the premises in question and started beating the petitioner and took away most of the dowry articles with them and with great struggle only a complain tunder Section 107/151 Criminal Procedure Code was registered against respondents 3 and 4 but that was not sent to Court. Numerous attempts were made by respondents 3 and 4 to dispossess her. Respondent No.3 gave a notice dated 3/08/1992 to the petitioner claiming that she was the absolute owner of property in question purchased on 12/09/1989 and stating that the petitioner was allowed to use the said premises Along with her husband under the bonafide belief that she would stay like an obedient licensee but after shifting to the house petitioner misbehaved with respondent No.3 and tried to harass her and that she was not staying in the house as an

obedient licensee and her license was revoked and she was called upon to vacate the house within 15 days of the receipt of the notice or else respondent No.3 will be forced to take legal action through appropriate Court of law. That on 27th November 1992 respondents 3 and 4 with 5/6 unidentified persons tried to dispossess her and with the intervention of neighbours they could not succeed and a complaint to that effect was lodged with Sho on 27/11/1992.

(4) Coming now to the incident dated 30/08/1993 the petitioner says that she had gone to purchase vegetables and on way back went to the house other mother and when she came back at about 7.30, she was surprised to see that locks and bolts of her premises had been broken, the bolt of the main door was tempered with hammer and her mother-in-law, grand mother-in-law, husband, Sanjay, brother of the husband and his cousin Vinod Kumar were present inside either main living room where from almost all the remaining articles and personal belongings of the petitioner had already been misappropriated. On enquiry from neighbours she came to know that all this had happened in collusion with the police and she was informed that 4 police people along with aforesaid persons came and broke open the locks. The petitioner went to her mother who came to the spot and rang up the police on Phone No.100 and flying squad came at about 8.45 p.m. and they enquired from respondents 3 and 4 about the incident as to how they had broken the locks and trespassed into the premises and dispossessed the petitioner. Respondents 3 and 4 informed them that it had been done with the order of the DCP and in the meanwhile local police came on the spot and took charge of the case and flying squad went away. It has been averred in the petition that local police along with Sub Inspector Ishwar Singh behaved in a ridiculous way and they did not lodge the report of the petitioner nor any action was taken against the culprits who had illegally trespassed into her premises and misappropriated the belongings of the petitioner. The petitioner claims that she along with her parents went to Sho who also did not help the petitioner and in fact shouted at her and her parents and threatened that they should leave the Police Station otherwise they will be put behind the bars. On 1/09/1993 a written complaint dated 31/08/1993 was given to the Commissioner of Police. On 4/09/1993, it is claimed, that telegrams were sent to the Commissioner of Police, DCP(Vigilance), Lt.Governor, Prime Minister and DCP (North-West), Ashok Vihar but all in vain. Later other complaints, as claimed in the petition, were sent. On these averments the writ petition was ultimately filed on 28/09/1991.

(5) Respondents 3 and 4 have not filed para to para reply controverting the averments made in the writ petition. Be that as it may, they have not disputed that the petitioner has been living in premises in question for last about four years although it is claimed that she was living as a licensee of respondent No.3. It is claimed that the possession of the house was delivered to them on 30/08/1993 and since then they are living in that house. As noticed above, respondents 3 and 4 have admitted that they have not been living in the house in question for about four years prior to 30/08/1993 and they were living in some different premises.

Curiously the respondents have not explained as to how and who delivered them possession on 30/08/1993. Admittedly, maintenance application u/s 125 Criminal Procedure Code as also complaint before the Dowry Cell against the respondents 3 and 4 and other members of their family was pending before 30/08/1993. Admittedly, matrimonial disputes between husband wife started in the year 1989 itself. Further, it is not disputed that in the year 1990 proceedings u/s 107/151 Criminal Procedure Code were initiated against the respondents ;that notice to vacate dated 3/08/1992 was sent to the petitioner and on 27/11/1992 complaint was made by petitioner with the police that respondents 3 and 4 were attempting to dispossess her. The D.D. Entry No.4A dated 16/12/1992 shows that petitioner alone was living in premises in question. The respondents have also not disputed the list of articles dated 1/10/1989 referred to above but have stated that the said articles were not removed because of paucity of accommodation with them.

(6) We may make it clear that in this petition we are not concerned with the title of property in question. We are also not concerned about the alleged torture and demand of dowry made by respondents 3 and 4. We are concerned only with the question whether the petitioner was dispossessed in the manner claimed by her as a result of the action of the police officials and on account of connivance of police with respondents 3 and 4 and, if so, what relief, at this stage, can be granted to her.

(7) The main contention of respondents is that the petitioner has filed a suit for possession which is pending in Civil Court and disputed questions of fact and law now form part of the said suit and thus this petition is not maintainable. Respondents 3 and 4 have also placed on record a copy of the plaint from which it seems that the suit for possession was filed by the petitioner in February 1994 after filing of the present writ petition. The petitioner has explained that to save the limitation of six months the civil suit was filed after filing of the present petition.

(8) In order to properly appreciate the objection of the respondents as to availability of other efficacious remedy to the petitioner, it is necessary to notice the stand of the police. In brief, the stand of the Police is that on 30/08/1993 at about 5.30 p.m. Mohini Devi, respondent No.3, came to the Police Station and lodged a report stating therein that her daughter-in-law Anju Devi, Along with her parents had forcibly entered her house and she has not allowed Mohini Devi to enter in that house which was owned by her. Dd entry No.11-A was recorded on the statement of Respondent No.3 in which she stated that she had gone to meet her mother at her residence and in her absence Anju Devi and her parents have started living in her house in question and that Court case was pending between her son and daughter-in-law and help should be rendered to her. The said Dd entry was handed over to Sub Inspector Ishwar Singh who reached the house in question Along with two other police officials mentioned in the said DD entry. When they reached the house in question the lock of the house was

opened by Smt.Mohini Devi and she entered the house and started living in that house and there after no incident took place. DD entry No 57-B dated 30/08/1993 was recorded showing return of police officials to the Police Station.

(9) In respect of the complaint which was alleged to have been made by the petitioner by ringing up Telephone No.100 pursuant to which flying squad came at the house in question at about 8.45p.m.,the version of the Police is that at about 8.55 p.m. an information regarding theft in house in question was received which was recorded vide D.D.No.60-B upon which Head Constable Inder Pal reached the house in question where MohiniDevi was found present and she told the police that no theft had taken place in the house and in this regard Dd No.63-B was recorded by the police.

(10) It is not the case of Respondents 3 and 4 that the possession of the house was delivered to them by the petitioner. The relations between parties were hostile ,criminal complaints had been lodged by both the sides, maintenance application of wife and her complaint before dowry cell was pending and admittedly ,since last about 4 years prior to 30/08/1993 respondents 3 and 4 were not living in the premises in question. Under these circumstances, we fail to understand the justification for sending police with respondent No.3 on her report to the effect that when she went to the house of her mother, petitioner and her parents entered in the house and started living therein. That was obviously absurd and false statement. Further, when the police goes with her, she is stated to have opened the lock of the house and starts living in the house without any opposition ,let or hindrance from any one, according to the case of all the respondents .If in the absence of Respondent No.3, the petitioner locked the house how Respondent No.3 had the keys of the lock, is again mysterious. the police intervention does not end here. Let us see what happens next. On there port of the petitioner and her mother Flying Squad comes and the local police so reaches soon and returns after a while and records Dd entries No.60-B and 63-B, inter-alia, to the effect that Mohini Devi stated that no theft had taken place. A complaint dated 6/09/1993 made by respondent No.3 to the Sho of the Police Station makes an interesting reading and we may reproduce it:-

"TO,THE S.H.O.P.S.Jahangirpuri,Delhi-110033.Sub: Complaint against theft of articles and jewellery from 1731 Block-K,Jahangirpuri, Delhi, by Smt. Kapoori Devi and her daughter Smt. Anju Devi R/o K Block, Jahangirpur,Delhi. Sir, The Applicant begs to submit as under:-1. That the applicant is the owner and in possession of the above said premises No. 1731 which was got vacated by Smt.Kapoori Devi and her daughter Smt.Anju Devi and the following articles and cash,jewellery were found missing while taking the possession of the house in question:-Rs.8,000.00 Cash, 5" tola jewellery, articles, including valuable clothes,utencils etc. etc. While vacating the said premises which costsRs.40,000.00in total which has been stolen away by the said Kapoori Devi and her daughter Anju Devi while taking the dowry goods which were presented in the marriage of the son of the Applicant.2. That there are cases pending in

Dowry Cell as well as in the Court of law against the applicant and as per law she is at fault to take away the personal belongings including cash and jewellery of the applicant while all the dowry articles were returned to her by the applicant/complainant. It is, therefore, most respectfully prayed that necessary orders for returning back the goods and articles including jewellery be passed in favor of the applicant/complainant and stern action be taken against the said Smt.Kapoori devi and her daughter Smt.Anju Devi and enquiry be made in the matter immediately and the applicant be also saved from her life and property at the hands of said Smt.KapooriDevi who has threatened to take possession of the property in question again. Thanking you and hoping you for favorable consideration.Delhi Dated: 6.9.93. Applicant/ ComplainantSd/-(Smt.Mohini Devi)1731, K-Block,Jahangirpuri,Delhi-33."

Paragraph No. 1 of the aforesaid complaint as originally typed was asunder:

"THAT the applicant is the owner and in possession of the above said premises No.1731 which was got vacated by Smt. Kapoori Devi and her daughter Smt.Anju Devi by order of the D.C.P.,Delhi and the following articles and cash, jewellery were found missing while taking the possession of the house in question."

(11) The words "by order of the Dcp, Delhi" were later deleted with pen. The deletion of these words presents an interesting picture, particularly, when seen in the light of what transpired on 30/08/1993 though, at this stage, we are not suggesting which officials or officers may be involved in the episode, but the involvement of police cannot be doubted.

(12) The facts noticed above speak for themselves as to the role played by the police in the entire episode of putting respondents 3 and 4 into possession. The facts and circumstances of the case clearly demonstrate, without any shadow of doubt, that it is with the active connivance of the Police that respondents 3 and 4 were inducted into the premises. Which particular police officials/officers were involved in this sordid affair will have to be determined by directing holding of an enquiry into the matter.

(13) In the light of the aforesaid facts the Court is not helpless in coming to the aid of the petitioner simply because the suit filed by her for possession is pending in the Civil Court. The suit was filed by the petitioner during the pendency of the writ petition since limitation period of six months was expiring and if not filed suit would have become time barred. It is only in exceptional cases and sparingly this Court would direct delivery of possession while exercising extraordinary jurisdiction under Article 226 of the Constitution but we cannot accept the argument that this Court has no such power. When the facts are so glaring as in the present case the Court is not powerless and has rather obligation and duty to direct restoration of possession. The availability of other efficacious remedy knowing well that the said remedy i.e. suit will take considerable time cannot always be used as a weapon of defense to deny relief to the aggrieved person .It

is true that generally power under Article 226 would not be used as a substitute for the enforcement of rights and obligations which can be enforced efficaciously through the ordinary process of courts, civil and criminal but there is no bar in exercise of that power and where and when it is required to be exercised would depend upon the facts and circumstances of each case. The present case is not of two individuals, one having dispossessed the other, but is a case where a helpless lady has been thrown out of the house where, she was living for about four years, in whatsoever capacity, as a result of collusion and connivance of the police, In such circumstances, this Court, to do complete justice between the parties ,has wide and ample powers to pass appropriate orders including orders for restoration of possession. On the facts like the present it is the duty of the Court to come to the aid of person who is oppressed and is in disadvantageous position and ,Therefore, it is necessary to make innovations and forge new tools when atrocities are committed by those who are required to enforce the rule of law. The alleged offender cannot be permitted to take advantage of delay injustice delivery system .The contention that they may have prima facie committed the offence outr? pass for the purpose of registration of Fir, which maybe registered, and that the law will have its own course after registration of the Fir and at this stage no orders for delivery of possession can be passed, cannot be accepted on the peculiar facts of this case. Of course, the criminal law will have its own course. Of course, the suit would also be decided on its own merits and this order will not prejudice parties in those proceedings but all this does not persuade us to deny the relief of putting the petitioner back into possession. All situations are not alike. What relief deserves to be given in exercise of jurisdiction under Article 226 cannot be placed in a rigid mould. It cannot be put in a straight jacket. The relief is to be moulded as the facts and circumstances of the case and cause of justice may demand .We are thus not persuaded to deny to the petitioner the relief of being put back in possession of the premises in which she has been living for nearly four years prior to 30/08/1993, the years during which her husband and mother-in-law were admittedly living in separate premises. We are not concerned in this case with the question of title of the property but are concerned with the role of the police. Police has no right to take law into their own hands. On the facts and circumstances noticed hereinbefore, it is evident that the police has taken law into their own hands and dispossessed the petitioner incomplete .disregard of rule of law. The action of the police has to be just, reasonable and fair. The impugned action of the police shows complete lack of commitment to the society and rule of law. Within the parameters of law, the police has to come to the aid of needy, helpless and the victims. Some bad elements in the Police force bring disrepute to the entire force and good officials and officers, which we hope would be in large number ,may also have to suffer sometimes because of few bad elements in the service .The time has indeed come for the Commissioner of Police to take stern action against the erring officers/individuals. Such officials have to be made accountable for undue in reference in the life and liberty of the citizens. We hope that the Government and the Commissioner of Police would

think of ways and means of restoring a high degree of confidence of society in police as such type of interference is increasingly coming to the notice of the Court. Some officers in police force are required to be told that the aggrieved person cannot be treated the way the petitioner was treated. The facts are so glaring that it would shock the conscience of anyone.

(14) In view of the aforesaid. we direct restoration of status quo ante and direct respondents 1 and 2 to put the petitioner back in possession of property in question within a week. The resistance, if any, by respondents 3 and 4 or any other person in this regard shall be strictly dealt with by the police in accordance with law .

(15) We further direct the Commissioner of Police to forthwith nominate an officer ,not below the rank of Additional Commissioner of Police, to hold an enquiry to identify the erring police officers/officials in this matter. The report shall be submitted to this court on or before 4/07/1994. On receipt of that report further directions in the matter including the directions for registration of First Information Report will be made. We again clarify that the observations made by us in this order will have no effect on any other litigation, civil or criminal, which may be pending or which may ensue hereinafter. List the matter for further proceedings on 11/07/1994. Appeal allowed.