
(1969) 05 PAT CK 0020

In the Patna High Court

Bacho Singh and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 16-05-1969

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 144

Citation : (1970) CriLJ 1706

Hon'ble Judges : Kanhaiyaji, J

Bench : Single Bench

Judgement

Kanhaiyaji, J.—The first two applications in revision, namely, Criminal Revision Nos. 1961 and 2388, are directed against the order dated the 31st August, 1968, parsed by the Sub-divisional "Magistrate, Monghyr Sadar, in a proceeding u/s 107 of the Criminal P. C., requiring the petitioners to show cause as to why they should not be ordered to execute a bond of Rs. 1,000/- each with two sureties of the like amount to keep peace for a period of one year. Being aggrieved by the above order, the petitioners of the two cases have come up to this Court in revision. The facts, which are not in dispute in all the cases, are that originally a dispute arose for possession over the lands measuring about 32 acres and odd (about 52 bighas of land), comprised of various khesra and khatas situated in village Bhabangama under Touzi Nos. 6862, 417C and 4180, between the parties. The disputed lands were attached under 3. 146 of the Criminal P. C., by order dated the 1st October, 1965, passed in Case No. 421M of 1954. Thereupon, Gulam Hussain, the landlord, filed Title Suit No. 59 of 1958 in the Court of the Sub-ordinate Judge, First Court, Monghyr for declaration of his title and possession over the disputed land. The suit was decreed on the 30th November, 1960. The petitioner of Criminal Revision No. 1961 of 1968, who were the defendants first party in the said title suit, filed an appeal in this Court, which was numbered as First Appeal No. 371 of 1960. Pending disposal of the first appeal in this Court, Gulam Hussain and others, the decree-holders, levied execution for delivery of possession of the disputed land. The petitioners of Criminal Revision No. 1961 of 1968 filed a petition to stay the delivery of

possession. After hearing both the parties, the learned Registrar ordered that the decree-holders respondents could get delivery of possession if they deposited the amount for which the lands are settled in the previous years. The decree-holders deposited the amount and got delivery of possession.

2. The first appeal filed by, the petitioners (of Criminal Revision No. 1961 of 1968) was allowed by this Court on the 18th September, 1967. On the 29th September, 1967, the petitioners filed an application for restitution under the provisions of Section 144 of the CPC before the Subordinate Judge, First Court. Thereafter, the plaintiffs, namely, Qulain Hussain and others, filed an application for leave to appeal to the Supreme Court, numbered as S. C. A. No. 165 of 1967, and, in the said case they filed an application for stay of the restitution proceeding started by the petitioners under the provisions of Section 144 of the Code of Civil Procedure. By an order dated the 22nd January, 1968, the stay petition of Gulam Hussain and others was disposed of by this Court. The prayer of stay was refused on condition that the defendants-respondents, namely, the petitioners of Criminal Revision No. 1961 of 1968, furnished security for Rs. 1,325 per annum until the disposal of the said appeal before taking possession of the land in dispute. In pursuance of the said order of this Court, the petitioners deposited Rs. 1,325 the rabbi crops of 1967-68 to the credit of the plaintiffs within the time granted. So far the facts are not disputed, Now, I shall take up each case separately.

Criminal Revision No. 1961 of 1968

3. It appears that after Gulam Hussain and others (Plaintiffs) failed in their attempt to get delivery of possession stayed, Huro Yadav and others (petitioners of Criminal Revision No. 2388 of 1968 and opposite party of this Criminal Revision No. 1961 of 1968) attempted to delay the delivery of possession. The petitioners, however, got delivery of possession of the disputed land with standing rabi crops on the 11th February, 1968; but this fact is being disputed by the opposite party. Their case is that the delivery of possession effected in favour of the petitioners was collusive. Whatever the position may be, it is not disputed that, according of the records, delivery of possession had been effected in pursuance of the orders passed by the learned Subordinate Judge. In spite of the success of the petitioners in this Court and delivery of possession in their favour, the trouble did not cease. The petitioners filed several sanahas alleging wrongful acts committed by the opposite party with the support of Gulam Hussain and others. In this situation) the Sub-Inspector of Police of Lakhisharai police station submitted report on the 20th July, 1968, for action u/s 107 of the Code of Criminal Procedure against the petitioners and the members of the opposite party. The police report is Annexure 2 to the petition. The Sub-Inspector of Police has said in his report that on the basis of the sanahas lodged by the petitioners, he made enquiry and learnt that there was a chronic dispute between the parties since 1955-56. There were series of cases between the first party (petitioners) and the landlord Gulam Hussain; but during the pendency of the proceeding the

disputed lands were given to the second party (opposite party). The following portion of the report is very significant:

The 1st party has stated that the disputed lands have been given in possession by virtue of the decree of 1st Sub-Judge, Monghyr, dated 19.1.1968 but on the Dakhaldehani the objectors members of the 2nd party filed in the case and the members of the 2nd party got the stay order but the Dakhaldehani was already done, so the first party got the delivery of possession. The 2nd party claimed that the Dakhaldehani was not done as the case was decided in favour of Malik Sri Gulam Hussain who has no concern with the land in question at present.

Thereafter, the Sub-Inspector observed:

From my enquiry, it transpired that now the Malik Sri Gulam Hussain has given to raiyats on patt to the members of the 2nd party and the 1st party now wants to possess the disputed land by using force etc.

In this situation, according to the Police Inspector, as both the parties were litigants and were ready for use of force, he recommended action u/s 117 (3) of the Code of Criminal Procedure.

4. The learned Sub-divisional Magistrate perused the report of the Sub-Inspector and ordered for drawing up a proceeding u/s 107 of the Code of Criminal Procedure against the members of both the parties as stated above.

5. It has been submitted on behalf of the petitioners that in view of the fact that the petitioners had got the judgment and decree of this Court in their favour and in pursuance of the same they got delivery of possession over the disputed land, they should not have been proceeded, and, therefore, the order passed by the learned Magistrate drawing up the proceeding u/s 107 of the Code of Criminal Procedure was improper and illegal. I find much substance in this contention, and it must be accepted,

6. "Wrongful act" means "wrongful act according to law." Section 107 of the Code is not intended to prevent lawful acts which may result in a breach of the peace because of the unlawful act of the others. The wronged and the wrong doer cannot be classed together. In this connection, I would refer to a decision of a learned Single Judge of this Court in *Suraj Narain Rai and Others Vs. The State*, . It has been observed that Section 107 proceedings are not intended for the purpose of binding over persons who do certain acts in exercise of their right to property, or in pursuance of a bona fide claim of right to property. Action under S 107 of the Code is in the main intended for persons who are desperate characters and habitually disturb the public peace or who in spite of orders of Civil or Criminal Courts finding possession against them persist in their unlawful conduct of disturbing the possession of others and take the law in their own hands. On going through the materials on the record, I am of the view that the Sub-divisional Magistrate was not at all justified in drawing up the proceeding u/s 107 of the Code against the petitioners.

7. Mr. Naseem Ahmad, learned Counsel appearing for the opposites party, submitted, that at the present stage it would be premature for this Court to say whether the allegations do or do not warrant a proceeding u/s 107 of the Criminal P. C. The petitioners have been asked to show cause, and after the show cause it may be that the learned Magistrate who deals with the matter may decide whether the proceeding should be at all continued against them. In my opinion, in the circumstances of this case, the contention raised by learned Counsel does not appear to be sound. There is no bar for this Court in quashing a proceeding in a case where the facts found or admitted do not justify at all a proceeding u/s 107 of the Code against a particular party. There are several decisions of this Court in which the Hon"ble Judges have dismissed the applications filed for quashing the proceedings u/s 107 of the Criminal P. C. at the initial stage on the ground that they were premature Bee Habibur Rahman v. Wali Alam Criminal Revn. No. 1227 of 1968, D/- 12.11.1966 (Pat) by Shambhu Prasad Singh, J. and Zahuruddin v. State Criminal Revn. No. 351 of 1954 D/-18-11-1954 (Pat) by C. P. Sinha, J. - On the other hand, there are several decisions of this Court in which the proceedings u/s 107 of the Criminal P. C. started against the petitioners were quashed at the initial state vide Brijendra Prasad Narayan Singh v. State Criminal Reference No. 7 of 1962 D/- 18-4-1962 (Pat) by Sahai, J. and Ramgovind Mahto v. State of Bihar Criminal Revn. No. 159 of 1962, DA 17.7-1962 (Pat) by S. N. P. J. In my opinion, when a party, having got delivery of possession by a Civil Court in pursuance of a decree of this Court, is in possession of as (sic) property and commits into (no?) wrongful act, this Court in circumstances should interfere if a proceeding u/s 107 of the Criminal P.C. is started against such a party. A Criminal Court should respect recent delivery of possession given by the Civil Court and should give protection to the person in possession against all the possible attempts by the per-sons who indulged in wrongful acts by disturbing the possession.

8. For the reasons stated above, I quash the proceeding u/s 107 of the Criminal P. C. started against the petitioners and set aside the order dated the 31st August, 1968, so far as the petitioners are concerned.

9. In the result, this application is allowed.

Criminal Revision No. 2388 of 1968.

10. This is an application by Huro Yadav and others against whom the learned Magistrate, along with the petitioners of Criminal Revision No. 1961 of 1968, by the same order dated the 31st August, 1968, started the proceeding u/s 107 of the Criminal P. C. and directed them to appear in his court and file show cause as to why they should not execute bond of Rs. 1,000 each with two sureties of the like amount to keep peace for a period of one year.

11. The material facts of this case are identical with the facts of the previous case. Be. sides, there is one more important fact which is necessary to be stated in this case. I have already stated that when the court refused stay of the

delivery of possession in favour of Bachoo Singh and others, the opposite party, the petitioners filed a petition under order 21 rule 58 of the Civil P. C. claiming interest in the property. This gave rise to Miscellaneous case No. 6 of 1968. The Miscellaneous case was decided by the learned Subordinate Judge by his order dated the 15th November, 1963. The learned Subordinate Judge considered the evidence and circumstances of the case and held that the petitioners were not in possession of the lands in question, and hence they were not entitled to get their relief as claimed for. In this situation, I do not think that at the present stage it would be proper to interfere with the order passed by the learned Magistrate. After the petitioners have shown cause, it will be for the learned Magistrate to finally consider the feasibility of the order passed by him.

12. In the result, therefore, I would dismiss the application in this case and discharge the rule.

Criminal Revision No. 196/69.

13. This is an application against the order dated the 24th September, 1968, passed by the Sub-divisional Magistrate, Monghyr, in case No. 496/2 of 1968. The material facts of the dispute between the parties are stated in Criminal Revision No. 1961 of 1963, also disposed of in the earlier part of this judgment.

14. The petitioners filed an application before the Sub-divisional Magistrate, Monghyr, for action against the members of the opposite party u/s 107 of the Criminal P. C. In the petition, it was stated that the members of the opposite party were creating trouble in spite of the delivery of possession in favour of the petitioners according to the directions of the High Court. It was further stated that in spite of the several suits filed by the petitioners, the local Police in collusion with and under the influence of the opposite party has taken no steps. Mr. S. C. Prasad, the Sub-divisional Magistrate, by his order dated the 21st August, 1968, directed the Divisional Inspector to enquire and report in the matter.

15. The Divisional Inspector, as directed by the Court, considered the allegations and looked into the papers and submitted his report dated the 29th August, 1968. It would be better to quote the entire report submitted by the Divisional Inspector which will facilitate the consideration of the order passed by the learned Sub-divisional Magistrate refusing to draw the proceeding against the members of opposite-party:

It transpired that a dispute arose between Syed Gulam Hussain's family and the family of Dani Singh, in respect of about 29 acres and odd of land. A proceeding was started between the parties u/s 145, Criminal P. C. and the land was attached u/s 146, Criminal P. C., by the order of R. D. Narain, Magistrate, 1st Class, Monghyr. Thereafter, a suit was filed by Bibi Masumul Fatma and others vide T. S. No. 59/58. It was decreed in their favour. On appeal, the Hon'ble High Court revised the said decree and it was decided in favour of Dani Singh and others vide F. A. No. 371 of 1960 an order dated 18.9.67. By this order, the

appellants Dani Singh and others became entitled to hold the land under their possession.

As the land was then under the custody of Bibi Masmul Fatma, Gholam Hussain and others under orders of the High Court subject to their depositing every year the amount of Rs. 1,825/- in Court, the appellants Dani Singh and others applied to the Court for delivery of possession vide Misc. Case No. 62 of 1967. It was filed on 7-12-67. There was some contest between the parties. The Sub-Judge, Sri B. B. Pd., was pleased to order for the delivery of possession to Sri Dani Singh and others on 11-2-63 along with the standing crops and thus they came in physical possession of land with others.

After taking possession of the land, Dani Singh and his man have harvested the standing crops peacefully as transpired by enquiry. This year also they have cultivated the lands and crops Rahri and Makai. on the said disputed land Khata Nos. 497, 1303, 1309, 1302 and 1299 stands.

As Dani Singh and others have got possession of the land and Court has also given possession to them the party of Gholam Hussain and others are out to create trouble as they want to possess the land by force and hence there is every chance of breach of the peace. Then S. D. Entry Nos. 199 dated 10-7-68 and 235 dated 12-7-68 of Lakhisarain also speak that opposite-party Ghulam Hussain and others are also bent upon to create trouble.

In order to maintain law and order and to prevent breach of peace, it is necessary that action u/s 107/317 (3), Criminal P. C., may be taken against the 1st party.

16. This report of the Divisional Inspector was put up not before Mr. S. C. Prasad but before another Sub-divisional Magistrate Mr. K. K. Patbak, for orders. Mr. Pathak observed that since the subject of the dispute was sub judice, and, both the parties had got orders of competent Courts, in their favour, it was not desirable to draw up a proceeding against any party and, as such, the matter was dropped. In my opinion, the order passed by the learned Sub-divisional Magistrate is erroneous. On a careful reading of the report submitted by the Divisional Inspector, it does not show that the question of possession is sub judice between the parties. Syed Ghulam Hussain and others, members of the opposite party, having lost in the High Court, filed Supreme Court appeal, but the petitioners in spite of the leave to appeal to the Supreme Court granted by this Court have taken delivery of possession of the disputed land through Court and that, has to be maintained unless the petitioners are evicted according to process of law.

17. In view of what I have stated above, the order dated 24th September, 1968, passed by the Sub-divisional Magistrate must be set aside. Accordingly, the said order is set aside and the case is remitted to the Sub-divisional Magistrate, Monghyr other than whose order is being set aside, with a direction to reconsider the Divisional Inspector's report, and, in case he feels that an apprehension of

breach of the peace still exists at the hands of the members of the opposite party, he may take suitable action according to law.

18. In the result, this application is allowed and the rule is made absolute.

19. To sum up, Criminal Revision No. 1961 of 1968 and 196 of 1969 are allowed, whereas Criminal Revision No. 2388 of 1968 is dismissed, Order accordingly.