

(1971) 09 KAR CK 0001
In the Karnataka High Court

D.N. Ramaiah and Others

APPELLANT

Vs

D.R. Aswathanarayana Setty and Others

RESPONDENT

Date of Decision : 16-09-1971

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 145 (6)
Penal Code, 1860 (IPC) — Section 188

Citation : (1972) CriLJ 1158

Hon'ble Judges : M.S. Nesargi, J

Bench : Single Bench

Judgement

M.S. Nesargi, J.—This petition is directed against the order passed by the Second City Magistrate. Bangalore, in Criminal Miscellaneous No. 33/1966 dated 27-2-1971, on an application filed by the petitioner praying that action be taken u/s 188 I. P.C. The learned Magistrate has refused to take action as prayed for.

2. The few facts necessary for a decision in this case are:

On 8-2-1967. the Second City Magistrate, Bangalore passed an order u/s 145 (6) Criminal P.C. in regard to a bungalow bearing No. 1848. Sampige Road, Malleswaram. Bangalore City. That order was taken upto the High Court in Criminal Revision petition No. 166/ 1967 which was disposed of on 1-5-1967. It was ultimately declared that the petitioners in this petition were in possession of southern portion of the said house and that the remaining parties, including the present respondents were prohibited from interfering with the said possession of the present petitioners and that the northern portion of the said house was in possession of respondents 1 and 2 and the petitioners were prohibited from interfering with the said possession.

3. The petitioners filed an application on 5-9-1968 before the Second City Magistrate, alleging that the respondents in this petition had forcibly evicted the petitioner from the southern portion of the house and thereby had violated the order passed by the Second City Magistrate and the High Court. Hence they prayed that action u/s 188 I. P.C. be taken.

4. The learned Magistrate has refused to initiate the proceedings u/s 188 I. P.C. on the ground that no allegation that the disobedience had caused or tended to cause danger to human life, health or safety or that such disobedience caused or tended to cause a riot or an affray had been made by the petitioners in their petition dated 5-9-1968. It is this order that is challenged in the revision petition.

5. Shri Mir Noor Hussain, the learned Counsel appearing for the petitioners, vehemently contended that learned Magistrate has misread the provisions of Section 188 I. P.C. while passing the order which is now challenged. He contended that every disobedience an order so promulgated is punishable u/s 188 I, P.C.

6. In my opinion this reasoning is not tenable in view of the plain reading of Section 188 I. P, C. It reads as follows:

Whoever, knowing that by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both:

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

EXPLANATION: It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm

7. Section 188 I. P.C. is divided into three paragraphs and an explanation. In the first paragraph it deals with disobedience of an order promulgated by a public servant lawfully empowered to promulgate such order fully knowing that such order has been promulgated. It does not lay down any penal provision. The second paragraph deals with the consequences of such disobedience in regard to any persons lawfully employed. In this connection Shri Mir Noor Hussain urged that the words "to any persons lawfully employed" cannot be read with the earlier Part of the second para, wherein it is stated "if such disobedience causes or tends to cause obstruction, annoyance or injury. According to him, if it is shown that such disobedience causes or tends to cause obstruction, annoyance or injury to any person, it would be sufficient to bring the act within the ambit of Section 188 I. P.C.

8. It is apparent that such a reading of the second para of Section 188 I. P.C. is not permissible. This reasoning is fully supported by a decision in Bharat Raut

and Others Vs. The State, It is held therein by the Patna High Court that u/s 188 I. P.C. mere disobedience of an order made by a public servant lawfully is not punishable and that the disobedience must lead to certain consequences narrated in second and third paragraphs of Section 188 I. P.C. It is also so held in Bachuram Kar and Others Vs. The State, What is observed therein is as follows:

Mere disobedience u/s 188 I. P.C. of an order promulgated by a public servant is not in itself an offence unless it entails one or other of the consequences which the section itself mentions.

Same is the view expressed in Ananta Charan Panda and Others Vs. Auntha Subudbi and Others, .

9. The reasoning put forward by Sri Mir Noor Hussain is that certain annoyance had been caused to this party, viz.. the petitioners because the petitioners were evicted by the respondents in spite of the order passed by the second City Magistrate and the High Court as narrated above.

10. In Dalganjan Koeri and Others Vs. State, . it is held as follows:

The disobedience of an order promulgated by a public servant which has been made punishable by Section 188 I. P.C. must be a disobedience which causes obstruction, annoyance or injury to any person lawfully employed. This also suggests that orders contemplated u/s 188 I. P.C. are orders made by public functionaries in the public interest. The disobedience of any order passed in favour of a party to the litigation by a court may result in annoyance to the party in whose favour it has been passed, but it cannot be said that it necessarily causes or tends to cause obstruction or annoyance or injury to any person.

11. Annoyance caused to the petitioners is not in law the annoyance contemplated in the second paragraph of Section 188 I. P.C. Proceedings u/s 145 Criminal P.C. are instituted and held and possession of immovable property in a particular person is declared as it is necessary in order to maintain public peace. If no question of breach of peace arises, no proceedings u/s 145 Criminal P, C. can be instituted. Hence, proceedings u/s 145 Criminal P.C. are not mainly intended for the benefit of a particular party, but are mainly intended to maintain public peace in a locality in question. Therefore, disobedience contemplated in Section 188 I. P.C. is that type of disobedience which affected the very purpose for which such order was promulgated.

12. It is seen that the averments made in the petition do not bring the case within the ambit of the second paragraph of Section 188 I. P.C. because no person lawfully employed is concerned. At the most, an attempt has to be made by the petitioners to bring their allegations within the ambit of the third paragraph of Section 188 I. P.C. There is no averment of disobedience, causing or tending to cause danger to human life, health and safety, or causing or tending to cause a riot or affray. Therefore, the view taken by the Second City Magistrate, Bangalore, is upheld. This petition is dismissed.