
(1983) 11 KL CK 0019
In the High Court Of Kerala
Case No : Criminal M.C. No. 210 of 1982

E.U. Raju Pillai and Others

APPELLANT

Vs

M.A. Abdul Kadir

RESPONDENT

Date of Decision : 08-11-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 28, 4(2), 482, 5
Kerala Buildings (Lease and Rent Control) Act, 1965 — Section 13, 13(1), 13(4),
13(5), 13(6)

Citation : (1983) 11 KL CK 0019

Hon'ble Judges : U.L. Bhat, J

Bench : Single Bench

Advocate : Mohammed Moopan and K.A. Jaleel, for the Appellant; K. Jagadishchandran Nair and M.V. Ibrahimkutty, for the Respondent

Final Decision : Allowed

Judgement

U.L. Bhat, J.—The Petitioners are said to be landlords of the Respondent in regard to a building coming within the purview of the Kerala Buildings (Lease and Rent Control) Act 2 of 1955 (for short the "Act"). It appears, on a representation submitted by the first Petitioner, the Kerala State Electricity Board discontinued the supply of power to the building and in due course, on the application of the Respondent, the Accommodation Controller, acting under the Act, directed restoration of electric supply to the building. It is also alleged that Petitioners 2 and 3 entered the place and committed certain acts to prevent the supply of water for the building. All these acts were done in pursuance of the common intention of all the petitioners and liable to be punished u/s 29 of the Act. On these allegations the Respondent filed a complaint before the Chief Judicial Magistrate, Kottayam which has been taken on file as C.C. No. 44 of 1981. It is to quash the proceedings that this CrI. M.C. has been filed u/s 482 of the Code.

2. The main contention urged by the learned Counsel for the petitioners is that cognizance of the offence alleged could not be taken on the complaint of a citizen

and that cognizance can be taken only on the complaint launched by an Inspector appointed for the purposes of the Act. This argument is rebutted by the learned Counsel for the Respondent.

3. Section 13 of the Act prohibits the landlord, without just or sufficient cause, from cutting off or withholding any of the amenities enjoyed by the tenant. In the case of any contravention of this provision, it is open to the tenant to complain to the Accommodation Controller of such contravention. If the Accommodation Controller is satisfied that the amenities were cut off or withheld with a view to compel the tenant to vacate the building or to enhance the rent, he may pass an interim order, directing the landlord to restore the amenities immediately, pending the enquiry referred to in Sub-section (4). Sub-section (4) of Section 13 relates to the enquiry contemplated and a final order being passed. Sub-section (5) provides for a direction for payment of compensation. Sub-section (6) provides for appeal to the District Collector against the order passed by the Rent Controller.

4. Section 29 of the Act states that if any person contravenes certain provisions of the Act including Section 13(1), he shall be punishable with fine which may extend to Rs. 2,000 and in default to suffer simple imprisonment which may extend to two weeks. Section 28 of the Act empowers the Government by notification in the gazette to appoint such officers as they think fit to be Inspectors for the purpose of enforcing the penal provisions of the Act and to assign to them such local limits as they may think fit. Sub-section (2) of Section 28 of the Act provides that for the purpose of any investigation or enquiry under the Act the Inspector may enter any premises with such assistance as he thinks necessary. Section 31 of the Act confers on the Government rule making powers to carry out the purposes of the Act. u/s 31 of the Act, rules have been framed and Inspectors have been appointed.

5. Sub-section (2) of Section 4 of the Code of Criminal Procedure (for short the "Code") states that all offences under any other law (i.e. other than the Indian Penal Code) shall be investigated, enquired into tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences. Section 5 of the Code states that nothing contained in the Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, of any special form of procedure prescribed, by any other law for the time being in force.

6. The offence involved in this case is an offence envisaged u/s 29 of the Act. It is not an offence under the provisions of the Indian Penal Code. The Act is a special law as well as a local law. Being an offence under a law other than Indian Penal Code, normally, the provisions of the Act will have to govern the matters relating to investigation, inquiry, trial, etc. It is only where the Act does not contain such provisions that the provisions contained in the Code may have to be

applied. There can be no doubt that in regard to an offence under the Indian Penal Code, any aggrieved person has a right to approach the criminal court with a complaint subject to certain special provisions in Chapter XIV of the Code. These special provisions restrict the right to initiate proceedings to persons occupying special status or capacity indicated therein or prevent cognizance being taken without sanction by appropriate authorities. The present case will, of course, not fall under any of these limiting provisions of the Code. If there is no such limiting provision in the Act, undoubtedly, a tenant can approach a criminal court alleging commission of an offence punishable u/s 29 of the Act. But, If there is any special provision in the Act, by virtue of Section 4(2) read with Section 5 of the Code, it is the special provision which will govern and not the general provisions contained in the Code.

7. At the outset it has to be stated that the Act does not contain any specific provision to the effect that cognizance in relation to an offence punishable u/s 29 of the Act can be taken by a criminal court only at the instance of an Inspector appointed u/s 28 of the Code. But, then, an express provision may not be necessary, provided, such a restriction can be gathered by necessary implication from the relevant provisions of the Act.

8. Section 28 of the Act, as we have already seen, empowers the Government to appoint Inspectors to enforce the penal provisions of the Act. In other words, the scheme of the Act contemplates enforcement of the penal provisions of the Act through Inspectors appointed by the Government. There is obviously a reason and rationale behind this provision. There are hundreds and thousands of buildings in the State which fall within the purview of the Act. There must be innumerable occasions and circumstances where amenities are either actually cut off with or without just cause or at any rate disputes arise between the landlords and the tenants regarding the amenities. The policy of the law is evidently to discourage those innumerable tenants from rushing to criminal court with complaints. Such complaints will not only clutter up the criminal courts of the State with unnecessary or even frivolous litigation, but also lead to harassment and victimisation of a large number of people. Any case deserving or undeserving may reach the court and may lead to precious time and energy of the court being wasted. It is evidently to avoid such a disastrous consequence that the legislature has provided for an Inspectorate to enforce the penal provisions of the Act. In the face of such a provision and the logic behind the provision, it is difficult to hold that any tenant can rush to a criminal court with a complaint. Sections 28 and 29 of the Act read together clearly spell out an implied restriction on the right of the criminal court to take cognizance. The necessary implication is that cognizance of an offence punishable u/s 29 of the Act can be taken by a criminal court only on motion by an Inspector appointed u/s 28 of the Act. To this extent, the provisions of the Act override the provisions of the Code. Since the Act does not contain any provision relating to the forum where the complaint is to be filed, the manner of enquiry or trial, etc., the provisions of the Code must necessarily apply regarding those matters. This view will certainly not

prejudice the interests of the tenant-class in the State as sought to be contended by the learned Counsel for the Respondent. It is always open to a tenant whose amenities are cut off, to approach the Inspector appointed u/s 28 of the Act by the Government with a complaint and the Inspector will have to investigate or inquire into the matter and on an overall consideration of the entire facts and circumstances of the case, the Inspector will have to decide whether he should approach a criminal court with a complaint. To that extent, the Inspector is functioning as a statutory authority. Therefore, it cannot be assumed that the grievance of a tenant will not be heeded to by the Inspector.

9. The tenant whose amenities are cut off, is not without remedy; he can move the Accommodation Controller and satisfy the latter regarding the existence of circumstances warranting an appropriate relief being granted to him u/s 13. He does not get any relief merely because of action being taken against the landlord u/s 29 of the Act. Section 29 is enacted to effectuate the general policy of the Act to discourage the landlords from interfering with amenities without just cause; that must be left to the inspectorate contemplated u/s 28 of the Act. This clear intention of the legislature can be spelled out from the scheme of the Act and the provisions referred to, even in the absence of specific provision to that effect as obtaining in rent control statutes in force in certain states like Haryana, Punjab, Uttar Pradesh, Rajasthan and Karnataka.

In the view I have taken, it follows that the learned Magistrate could not have taken cognizance of the offence except on a complaint by the Inspector concerned appointed by the Government u/s 28 of the Act. The proceedings in G.C. No. 44 of 1981 on the file of the Chief Judicial Magistrate, Kottayam are, therefore, quashed and the CrI. M.C. is allowed.