

(1988) 09 OHC CK 0036

In the Orissa High Court

Case No : Criminal Miscellaneous Case No. 186 of 1986 & Criminal Miscellaneous Case No. 188 of 1986

Madhab Chandra Panda and Another

APPELLANT

Vs

Bishnu Charan Routrai

RESPONDENT

Date of Decision : 21-09-1988

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Penal Code, 1860 (IPC) — Section 34, 379, 427

Citation : (1989) 2 OCR 37

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : B. Rath, for the Appellant; None, for the Respondent

Judgement

K.P. Mohapatra, J.—This is a petition u/s 482 of the Code of Criminal Procedure ("Code" for short) for quashing the order of cognizance passed by the learned Sub-Divisional Judicial Magistrate, Jharsuguda, against the Petitioners for offences u/s 379 and 427 read with Section 34 I.P.C.

2. The Petitioners are the accused and the opposite party is the complainant in I.C.C. Case No. 19 of 1986. The case in brief is as follows. The disputed house and premises are situate in Jharsuguda town and belonged to Samir Kumar Misra. The Orissa Forest Corporation Ltd., was in occupation thereof as a monthly tenant at a rental of Rs. 600/- per month since 1973. In the year 1985 Samir sold the same in favour of the three sons of the opposite party, after which H.R.C. Case No. 12 of 1985 was filed in the court of the learned Sub-Divisional Judicial Magistrate-cum-House Rent Controller, Jharsuguda, against the tenant and other office bearers, The occurrence took place on 25.2.1986 when the house was in occupation of Petitioner No. 1 who functioned as the Divisional Manager of the Orissa Forest Corporation Ltd., at Jharsuguda. At mid-day Petitioner No. 1 and his son Petitioner No. 2 with the help of labourers cut down two standing Bela and Barakoli trees without permission of the opposite party

and put him to loss, The opposite party reported the incident at the police station, But as no action was taken, the complaint petition was filed.

3. The learned Sub-Divisional Judicial Magistrate on consideration of the facts contained in the complaint petition and the initial statement took cognisance of the offences referred to above and issued process against the Petitioners.

4. Mr. B. Rath, learned Counsel appearing for the Petitioners, contended that the opposite party was not in possession of the trees in question. On the other hand, Petitioner No. 1 was in occupation of the disputed house and premises on behalf of the Orissa Forest Corporation Ltd. being its local Divisional Manager and as such was in defacto possession of the trees. Therefore, even if it is assumed for the sake of argument that the trees were cut and removed either by him and his son or at their instance, a case of theft and mischief punishable under Sections 379 and 427 IPC was prima facie not made out because of non-satisfaction of one of the important ingredients for the aforesaid offences, viz. the factum of possession. In other words, as the opposite party was not in possession of the trees, the criminal case against the Petitioners who were in possession was not maintainable. In support of his contentions, he placed reliance on *Nataraja Mudaliar Vs. Devasigamani Mudaliar*, *Tarachand Sah and Others Vs. Emperor*, , and *Bramhachari Martha Vs. The State*, . He also relied upon some other decisions which are not relevant for the purpose of this case and so I do not feel called upon to make reference to them.

5. In the case of *Nataraja Mudaliar v. Devaskamani Mudaliar* (supra) it was held that an owner of a house cannot accuse a person removing trees from the tenant's possession, of committing theft, because a lease generally implies a transfer of an interest in immovable property which is possession, and hence the trees cannot be said to have been removed from the owner's possession. The facts of the case were quite different. According to the admission of the complainant (P.W. 1) the house and trees were in possession of Murugesha Mudaliar as tenant till his death and thereafter in the possession of his wife. The actual possession on the date of commission of the alleged offence was with the wife who was occupying it in a tenant's capacity. Therefore, the house and the trees were in the possession of the lessee's heir and in that premises it was held that cutting down two trees from the leasehold land did not tantamount to theft. In the case of *Tarachand Sah and Ors. v. Emperor* (supra) the mortgagee was in possession of the lands and trees of a village and while in such possession he cut down and removed a sisham tree belonging to the master of the complainant. It was held that as possession over the trees lay with the mortgagee, he could not commit theft of the trees. These facts indicate that this decision like the previous one is distinguishable. In the case of *Brahmachari Martha v. The State* (supra) the trees cut and removed were standing on Government land Possession of the trees by Government could not be proved and so it was held that by proof of title alone, a case of theft of trees could not be made out. This case, as would appear from the finding, it distinguishable as well.

6. In order to appreciate the contention of Mr. Rath, it is necessary to visualise the relationship of landlord and tenant. A monthly tenant has right of occupation of the house and premises so long the monthly tenancy subsists. He has no other right. He cannot claim the right of removal of things and articles which exist on the demised premises belonging to the owner. A small example will illustrate the point. "A" is the owner of a house. He lets it out to "B" as a monthly tenant along with furniture. While in occupation as a monthly tenant, "B" without knowledge or permission of "A" removes the furniture to some unknown place and in due course he also removes some of the doors and windows of the house. In a case of this nature, can "B" take the defence that because he was in possession of the furniture and the house with the doors and windows, he did not commit theft? In my view, the answer is bound to be in the negative. The right of the monthly tenant does not extend that far so as to remove things and articles which belong to the owner without his permission. If that is done, it would be bound to be with dishonest intention. Therefore if the contention of Mr. Rath is accepted, it will spell great disaster to landlords.

7. In this case the monthly tenant was the Orissa Forest Corporation Ltd. Because Petitioner No. 1 happened to be the local Divisional Manager, he was in occupation of the house and premises with members of his family including Petitioner No. 2. After purchase, the opposite party on behalf of his sons must be deemed to be in legal possession of the disputed house and premises including the trees. Without his knowledge and permission and despite protest, the Petitioners were not authorised to cut down and remove the trees, if any.

8. In view of the aforesaid facts, the learned Sub-Divisional Judicial Magistrate did not commit any error of law or jurisdiction in taking cognizance-of the offence and for issuing process against the Petitioners. The petition is, therefore, without merits and is rejected.