

(1949) 06 PAT CK 0001

In the Patna High Court

Case No : Criminal Miscellaneous Case No. 241 of 1949

Madhav Chandra Chatterji

APPELLANT

Vs

The King

RESPONDENT

Date of Decision : 07-06-1949

Acts Referred:

Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947 — Section 17, 20
Penal Code, 1860 (IPC) — Section 188

Citation : AIR 1952 Patna 356

Hon'ble Judges : Meredith, J

Bench : Single Bench

Advocate : Baldeva Sahay and N.N. Ray, for the Appellant; C.P. Shahi, for the Respondent

Judgement

Meredith, J.—This is an application for quashing criminal proceedings against the petitioner. An order was passed against the petitioner for his eviction at the instance of his landlord under the Bihar Buildings (Lease, Rent and Eviction) Control Act, 1947. There is a provision in Section 17 of this Act that every order of the Controller passed under Apt shall be executed by the Court having jurisdiction to entertain a suit for the recovery of arrears of rent in respect of the building, in relation to which the order to be executed is passed, as if such order were a decree passed by such Court. Accordingly the landlord took out execution under this provision. The petitioner countered this by himself filing a civil suit for a declaration that the eviction order was illegal. In this suit he obtained an "ad interim" injunction restraining the landlord from executing the eviction order.

2. The next move in the game was apparently played by the landlord by approaching the controller who has accordingly filed a complaint against the petitioner for contravening Section 20, Sub-section (2) of the Act which says: "whoever fails to comply with any direction made or deemed to have been made under this Act shall be punishable with imprisonment for a term which may extend to one year or with fine or with both." On this complaint, however the

petitioner is now being proceeded against u/s 188 of the Indian penal Code.

3. In my opinion Section 188 relates to violations of orders made under the Code, and has no application to a matter like the present. But apart from that the injunction given by the Civil Court must be respected, and the petitioner having obtained his injunction was fully entitled to rely upon it and refuse to vacate the house so long as it subsisted. The course adopted savours unpleasantly of a manoeuvre to evade the injunction granted by the Civil Court. This kind of thing is against the public interest and cannot be approved, and indeed the learned Advocate for the Crown, who has, if I may say so, taken a very proper attitude, concedes that a procedure which in effect ignores the Civil Court injunction, cannot be supported.

4. Accordingly this case cannot be allowed to proceed. I say nothing as to the position if and when the injunction is vacated but the proceedings upon the present complaint must be and are quashed.

5. An alternative point was raised before me relying upon the recent decision of the Federal Court in "JATINDRA NATH v. PROVINCE OF BIHAR", decided on the 28th of May 1949 to the effect that the provisions contained in Section 1, Sub-sections (2) and (3) of the Bihar Maintenance of Public Order Act 1947, under which the Act has in, fact been extended by notification, are "ultra vires". As the application succeeds on the other ground, I do not consider it necessary to enter into this question, interesting though no doubt it is.

6. The rule is made absolute and the Proceedings are quashed. The petitioner should be discharged.