
(1949) 08 CAL CK 0027
In the Calcutta High Court
Case No : Criminal Revision No. 596 of 1949

Panchanan Das

APPELLANT

Vs

The King on the complaint of Upendra Nath Samanta

RESPONDENT

Date of Decision : 25-08-1949

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 439
Penal Code, 1860 (IPC) — Section 441

Citation : AIR 1950 Cal 80

Hon'ble Judges : Sen, J

Bench : Single Bench

Advocate : M.M. Sen and Surathi Mohan Sanyal, for the Appellant; Debabrata Mukherjee, for the Respondent

Judgement

Sen, J.—The petitioner has been convicted of having committed an offence punishable u/s 448, Penal Code and sentenced to pay a fine of Rs. 200, in default to undergo simple imprisonment for one month. Out of the fine, if paid, the complainant was to be awarded Rs. 150, as compensation. This order of conviction and sentence was passed by Sri B. Majumdar, Magistrate, Second Class, Howrah. An appeal by the petitioner to the Additional District Magistrate was dismissed. The petitioner has now obtained, this Rule.

2. The facts alleged by the prosecution, are these. The complainant was a tenant of the accused petitioner in respect of a shop room at 8 Lal Behari Basu Lane and he used this room for the sale of straw. On 3rd Aswin the accused landlord came to the complainant and asked him to vacate the room temporarily as he wished to repair it. Believing in the statement the complainant on 4th Aswin removed his articles from the room and went away. He returned on 14th Aswin and found that the room was being used as a garage by the accused who refused to vacate although requested to do so. The defence taken is that the complainant terminated his tenancy in the month of Sravan and gave up possession of the room in question to the accused. The complainant had a grocery shop in a room

taken lease of from one Kirtibash. The landlord of Kirtibash brought a suit against Kirtibash and got orders to demolish this room. Upon this Kirtibash asked the complainant to give up the room and the complainant not having any other place to go to has brought this false case against the accused in order to get back the room which he had already surrendered. The learned Court below has disbelieved the accused's case regarding surrender and it has believed the complainant's case that the room was given up to the accused temporarily for the purpose of enabling the accused to repair it and that the accused is now refusing to give up possession.

3. The question which arises is whether on these findings the accused can be held guilty of having committed the offence of criminal trespass. The charge against the accused as originally framed was in the following terms :

"That you on or about 30th September 1948 (corresponding to 14th Aswin) at Lal Behari Basu Lane, p. s. M. P. Ghora committed house trespass by entering into 8 Lal Behari Basu Lane used as a shop room by the complainant Upendra Nath Samanta with the intent to cause annoyance to him."

The charge clearly shows that what was being alleged against the accused was that he entered into the premises on 14th Aswin with intent to cause annoyance to the complainant and thereby committed the offence of criminal house trespass. The learned Magistrate found that the facts did not support the charge because the entry was not on 14th Aswin but on 4th Aswin. Realising this he says that the charge was not quite accurate and he says that the offence of the accused was that he lawfully entered into the shop room on 4th Aswin but committed criminal house trespass by remaining there after 14th Aswin although requested by the complainant to give up possession. On appeal the learned Additional District Magistrate also comments on this defective charge and he says that the entry of the accused on 4th of Aswin was lawful and that the offence of trespass was committed on 14th Aswin when he refused to vacate the premises. He holds that the intention of the accused on this date was to cause mischief and annoyance to the complainant. He further said that the defective charge had not caused any failure of justice and thereafter he upheld the order of conviction and sentence.

4. It is clear from both these judgments that the crime with which the accused has been charged is that which has been denoted in the second portion of Section 441, Penal Code. The section is as follows :

"Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

is said to commit criminal trespass,"

In order to establish the offence described in the second portion of Section 411, Penal Code, the prosecution must prove that the accused remained in the premises into which he has lawfully entered with the intention of intimidating, insulting or annoying the person in possession of the property or with intent to commit an offence. Learned advocate for the petitioner contended that as the petitioner had already entered upon the property he was in possession and therefore, there could be no criminal trespass because in order to establish criminal trespass it must be proved that some one else other than the trespasser was in possession of the property. He says that constructive possession would not do. I am not impressed with this argument. If a person lawfully enters into a room in the possession of another person and induces that person to go out and on return of that person forcibly prevents him from re-entering and remains in the room with the intention of insulting that person, then it cannot be said that the second part of Section 441, Penal Code, does not apply. When possession is spoken of in this section it means possession at the time of the entry. If a person is in possession at the time of the entry and some one enters into the premises with one of the criminal intents mentioned in the section he will have committed an offence punishable under the first part of the section. Again, if a person enters into the property of another and after such entry refuses to leave the property with any of the intents mentioned in the section, he will be guilty of criminal trespass although by his entry he has succeeded in dispossessing the person who was in possession of the property at the time of the entry. There are, however, other difficulties in the way of the prosecution. As I have said before the case which the accused had to answer was the case of lawful entry and unlawfully remaining in the premises entered with one of the intents specified in the section. There is nothing in the charge to give notice to the accused that when the landlord entered the premises he had any of the intentions specified in the section. The judgment proceeds on the basis that the entry was lawful. In other words, the judgment proceeds on the basis that the landlord entered into the premises with none of the intentions mentioned in the section. If ten days after such entry he refused to vacate can it be said that he is remaining in the premises with the intention to intimidate, insult or annoy the person who was in possession at the time of the lawful entry or to commit any offence? I do not think it can. The lower appellate Court has held that the accused has continued in unlawful possession with a view to cause mischief and annoyance. There is no evidence that he had any intention to cause mischief nor is there any evidence to show that he had any intention to annoy. At worst his intention was to remain in the premises unlawfully but that by itself does not constitute an offence of trespass. A person charged with trespass under the second part of Section 441, Penal Code not only must remain on the premises unlawfully but he must remain on the premises unlawfully with certain intentions namely, the intent to intimidate, insult or annoy or to commit an offence. There is nothing to show that the accused had any of these intentions. That being so, the second part of

Section 441, Penal Code can have no application.

5. The order of conviction and sentence must therefore be set aside and the accused must be acquitted.

6. I realise that it may be that the landlord when he entered originally on the premises got in there by committing the offence of cheating, but there is no such allegation either in the charge or anywhere else. On the contrary, the specific finding is that the landlord when he entered the premises entered lawfully. I was asked to send the case back for a retrial on the footing that the offence committed was one described in the first part of Section 441, Penal Code, but I do not think that the accused should be harassed any further because the complainant has his remedy in the civil Court where this question could be more effectively dealt with.

7. The rule is made absolute. The fine, if paid, shall be refunded.