
(2001) 01 PAT CK 0017
In the Patna High Court
Case No : Cr.W.J.C. No. 372 of 2000

Radhe Shyam Chaudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-01-2001

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2001) 2 PLJR 237

Hon'ble Judges : S.K. Chattopadhyaya, J

Bench : Single Bench

Advocate : Pranav Kumar, for the Appellant; S.D. Yadav for the State, for the Respondent

Final Decision : Allowed

Judgement

S.K. Chattopadhyaya, J.—Heard the learned counsel for the petitioner as well as the learned Government Advocate. In spite of appearance filed by respondent no.3, his counsel Mr. Md. Fahimuddin is not present in Court in spite of repeated call to oppose the prayer made by the petitioner. It is a peculiar case in which the Sub-divisional Officer, Piro, Bhojpur at Arrah (respondent no.1) has acted with utter disregard of settled law and has shown his authority in directing the police to un-lock the rented shop of the petitioner and to allow the landlord to enter in the said shop room.

2. There is no dispute of the fact that the petitioner along with his partner Dr. Raghubans Singh is carrying on business in the rented shop, which was let out to them by respondent no.3, Kanhaiya Lal Gupta. For some reason or other there arose some dispute between the tenant and the landlord-first party. Landlord has prayed before the Sub-divisional Officer for initiating a proceeding u/s 144 of the Code of Criminal Procedure (in short "the Code"). By order dated 28.4.2000 after perusing the show cause of both the parties the Sub-divisional Officer came to the finding that the disputed plot and room belongs to the first party landlord. He further found that Raghubans Singh has let the premises since several years and

was not doing any business. He also found that except Raghubans Singh the landlord, has not let out the said room to any other tenant. Thus, he has come to the conclusion that after Raghubans Singh left the shop room, other members of the second party were forcibly hatching a plan and were trying to possess the shop room of the 1st party-landlord. Therefore, the Sub-divisional Officer dropped 144 proceeding in favour of the landlord and made it absolute against the petitioner. Against this order, uncon-trovertedly the petitioner moved the learned District & Sessions Judge in Criminal Revision No. 89 of 2000, which has been admitted and pending for final disposal. However, subsequently, the landlord-respondent no.3 filed a petition before the Sub-divisional Officer on 3.7.2000 praying therein for police help in order to get the possession of the said shop room by breaking open the lock etc. The Sub-divisional Officer without giving any notice to the petitioner on the same day passed the order allowing the prayer of respondent no.3. He directed the police to help respondent no.3 in taking over possession of the said shop room.

3. The grievance of the petitioner was that even when this Court on 10.8.2000 passed interim order staying the operation of the order of the Sub-divisional Officer dated 3.7.2000, as contained in Annexure-4, the lock of the shop room was broken and the police had seized all the articles of the petitioner, which was in the shop room.

4. Learned Government Advocate in his usual fairness has submitted that the Sub-divisional Officer in a 144 proceeding could not have ordered for giving police force to take possession of the shop room by the landlord.

4. Considering the facts and circumstances of the case I am of the firm opinion that the Sub-divisional Officer, Piro, Bhojpur at Arrah, has acted with arbitrary and with utter disregard of settled principles of law. First of all in a proceeding u/s 144 of the Code he could not have decided the title of either of the parties. Secondly, though he had found that Raghubans Singh was not carrying on his business in the shop premises but had failed to notice that the petitioner-Radhe Shyam Chaudhary was also a party before him in the said proceeding. He ought to have given a finding about the status of the petitioner, Radhe Shyam Chaudhary vis-a-vis landlord, Kanhaiya Lal Gupta. Apart from this, on a mere petition filed by the landlord, without hearing the petitioner, the Sub-divisional Officer ought not to have passed the impugned order as contained in Annexure-4. He had absolutely no jurisdiction to allow the landlord to take possession of a rented shop room with the help of the police force. It appears that the Sub-divisional Officer thinks himself above law.

5. In the facts and circumstances, I allow this writ petition setting aside the order dated 3.7.2000 as contained in Annexure-4 and direct the Sub-divisional Officer to restore the possession of the petitioner within one week from the date of receipt/production of a copy of this order. He is also directed to hand over all the seized articles to the petitioner within the aforesaid period.

6. In the facts of the case though I am inclined to allow cost against the Sub-divisional Officer as well as the landlord (respondent no.3) but an assurance given by the learned Government Advocate that in future the Sub-divisional Officer will not take law in his own hand, I refrain from imposing cost against him by merely giving a warning that if in future he is found to have acted in violation of settled law, he will be duly punished. So far respondent no. 3, Kanhaiya Lal Gupta, is concerned, I impose a cost of Rs. 2,000/-(rupees two thousand) to be paid to the petitioner within ten days from today for the loss suffered by the petitioner at his instance. If this amount is not paid to the petitioner by respondent no.3 within that period, the petitioner may bring this fact to the knowledge of this Court. This writ application is, accordingly, allowed. Let a copy of this order be given to the learned Government Advocate for early communication.