

(1995) 03 AHC CK 0005

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 19858 of 1993

S. Subramaniam and Others

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 15-03-1995

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 202, 373, 374, 377
Penal Code, 1860 (IPC) — Section 109, 114, 120B, 4.9, 441
Specific Relief Act, 1963 — Section 6

Citation : (1995) 19 ACR 284

Hon'ble Judges : K.L. Sharma, J

Bench : Single Bench

Advocate : S.N. Verma and Sharad Malviya, for the Appellant; A.G.A. and Virendra Singh, for the Respondent

Judgement

K.L. Sharma, J.—This is an application u/s 482, Code of Criminal Procedure for quashing the summoning order as well as the criminal proceeding in complaint case No. 3435 of 1993 under Sections 447, 120B I.P.C. between Ajay Kumar Varma v. Subramaniam and Ors. pending before the Additional Chief Judicial Magistrate, Kasiya, Deoria.

2. I have heard Sri. S.N. Varma, Senior Advocate and the learned Counsel for the applicant, Sri. Virendra Singh learned Counsel for the opposite party No. 2 as well as learned A.G.A. and perused the material brought on record.

3. Since counter and rejoinder affidavits have been exchanged between the parties, the following admitted facts emerged from the pleadings:

The Opposite party No. 2 is the owner and landlord of the building situate on plot Nos. 2214/2 and 2215 of village Kasiya, Tappa Nanpur, Pargana Sidhua Jobna, Tehsil Padrauna. district Deoria. He let out the aforesaid premises for opening the branch of Central Bank of India (hereinafter referred to as bank) at Kasiya in the District Deoria. The applicant No. 1 is the chairman and the Managing Director of the bank posted at its headquarter in Chandramukhi, Nariman point, Bombay.

Applicant No. 2 is the Deputy General Manager of the bank posted at the Zonal Office Akash Deep, Vidhan Sabha Marg, Lucknow. The applicant No. 3 is the Regional Manager posted in the Regional Office of bank at Deoria. The applicant No. 4 is the Branch Manager of the bank posted at Kasiya Branch, district Deoria. After the settlement of the terms and conditions of the lease-deed the opposite party No. 2 executed a lease deed in favour of the Branch Manager of the Bank at Kasiya with effect from 1.6.1978 and handed over the possession of the premises to the Branch Manager for the use of the bank and for the use of the residence of the Branch Manager. The period of lease expired on 31.5.1989 but the branch office of the bank and the residence of the Branch Manager continued in the said premises without any interruption. The applicant No. 4 offered to execute a fresh lease-deed at a monthly rent of Rs. 2/- per square feet of the total area subject to the condition that an additional area of 250 square feet will be provided for the residence of the Branch Manager and the residence in occupation of the Branch Manager will be released. The opposite party No. 2 desired to continue the lease at the enhanced rate with effect from 1.6.1989 and correspondence in this regard took place between the parties but somehow the Opposite party No. 2 did not execute the lease-deed for further period of lease and later on showed his inability to provide the additional accommodation of 250 square feet for the residence of Branch Manager. The Opposite party terminated the tenancy of the bank and asked the applicant No. 4 to vacate the premises. However, bank could not vacate the premises and insisted upon the Opposite party No. 2 to execute a fresh lease-deed. The Opposite party No. 2 served a notice u/s 441 of I.P.C. on 20.2.1992 on the applicants directing them to vacate the premises by 10 a.m. on 7.3.1993. The bank could not vacate the premises and regional manager sent a reply to the Opposite party on 25.2.1993. The Opposite party No. 2 sent a report to the S.P. Deoria against the applicant on 11.3.1993 and filed a complaint on 12.3.1993 before the A.C.J.M. Kasiya which was registered as complaint case No. 3435 of 1993 against all the applicants and after examining the complainant on 16.3.1993 and his two witnesses Vinod Kumar Srivastava and Salamat Ali on 22.3.1993, the learned A.C.J.M. was pleased to summon the applicants for the offence u/s 447/120B, I.P.C. on 6.11.1993.

4. Mr. S.N. Varma the learned Senior Advocate appearing on behalf of the applicants has submitted that the admitted facts and circumstances of the case clearly indicate that the complaint filed by the Opposite party No. 2 in the Court of A.C.J.M. Kasiya is wholly misconceived and does not disclose prima facie any offence punishable under Sections 447 and 120B, I.P.C. and as such it is liable to be quashed. He has further enunciated that in the case of relationship of the landlord and tenant, if the tenant refused to quit the premises after the expiry of notice, the only legal remedy available to a landlord is to approach the competent civil Court to eject the tenant in accordance with law and he cannot bring a complaint for criminal offence u/s 441, I.P.C. punishable u/s 447, I.P.C. and the offence u/s 120B, I.P.C. do not arise against the applicants who are

engaged in their official duties in connection with the work of the aforesaid bank. But in the present case the Opposite party No. 2 instead of filing a suit for rent and ejection before a competent Civil Court has illegally filed a false and frivolous complaint before the criminal Court with an ulterior motive for wreaking vengeance to harass and humiliate the highly placed officials of the bank contrary to law.

5. Learned Counsel for the Opposite party No. 2 Mr. Virendra Singh has stated that this application u/s 482, Code of Criminal Procedure is not maintainable because the applicants have an alternative and an effective remedy of filing a criminal revision either before the Court of session or before the High Court but instead of availing of that remedy they have invoked the inherent power of the Court which are not justified on the facts and circumstances of the case. In support of his view he has stressed upon a decision of this Court in the case of Kailash Chaudhary v. State of U.P. (30)1993 ACC 664 . This Court has expressed the view that in the case of a summoning order passed on ex parte consideration of facts and evidence, the accused persons can appear and file objection before the same Magistrate who is competent to recall the exparte order and can even drop the proceeding if he is satisfied that the complaint and the evidence adduced by the complainant in support of the complaint do not make out prima facie any case to proceed further. But this judgment cannot wash or wipe away the inherent powers of the High Court conferred by Section 482, Code of Criminal Procedure irrespective of any other provision contained in the Code. Section 482, itself states that nothing in this Code shall be deemed to limit or affect the inherent power of the High Court. It clearly means that right conferred on an aggrieved person to file a criminal revision u/s 397, Code of Criminal Procedure or an appeal under Sections 373, 374, 377, 378, 380, 381 and 449 of the Code do not limit or affect the inherent power of the High Court. The guidelines laid down by Hon'ble Supreme Court in the case of R.P. Kapur Vs. The State of Punjab, and in the latest important case of State of Haryana and others Vs. Ch. Bhajan Lal and others, clearly recognise the inherent power of the High Court u/s 482, Code of Criminal Procedure to quash the investigation or criminal proceedings when they are instituted contrary to the provision of law or for an ulterior motive for wreaking vengeance due to private and personal grudge or when the allegation made in the report or the complaint or in the evidence collected or adduced do not disclose on its face any offence cognizable or non-cognizable. Therefore, ordinarily and generally the High Court does not invoke its inherent power and does not exercise its inherent power to quash an investigation or the complaint proceeding but the High Court can also not shut its eye from a case in which allegation on its face do not disclose a sufficient ground for proceeding against the accused and whether it appears a malicious institution of a prosecution against those persons who are not even remotely responsible for the proposed prosecution. What is to be done by the High Court is to distinguish a case where an offence appears on the face of allegations from a case where allegations do not disclose the commission of any offence-major or minor but

simply indicates a case of civil nature or a dispute of personal and private nature and the motive behind, the allegations becomes prominent. In the first category of the case the High Court does not interfere by invoking its inherent power but in the second category of the cases, the High Court must invoke its inherent power and protect the individual dignity, reputation and personal liberty of the citizens who are falsely and frivolously prosecuted at the whims of the complainant and by inadvertent rather negligent exercise of the power by the subordinate Court. Therefore, it has to be seen on the facts and circumstances of the case whether the present case falls in the first category or in the second category and if it falls in the second category, the contention of the learned Counsel that a criminal revision should have been filed instead of filing an application u/s 482, Code of Criminal Procedure would lose its substance.

6. A perusal of the admitted facts and circumstances clearly shows that it is a case of exclusively civil nature between the landlord and tenant and the remedy for the landlord to get back possession of the lease premises is only by way of filing a civil suit for the rent and ejectment in the competent Civil Court, a notice to quit the premises sent by the Opposite party No. 2 in the capacity of landlord to the applicant No. 4, Branch Manager of the bank, simply reads that only on the expiry of the period of lease, he does not wish to renew the lease and calls upon the tenant to deliver the possession after the expiry of the month from the date of receipt of notice. This notice (Annexure-2) further clearly contains a warning to the tenant that if the possession is not delivered by the specific date a civil suit will be filed for possession and for damages at the rate of Rs. 4,000 per month plus Rs. 75 as charges of this notice. This clearly does not give rise to any criminal offence against the tenant or any of the applicants who are functionaries of the bank. The Opposite party No. 2 has not admittedly filed a civil suit to restore the possession of the premises to him. There has been admittedly correspondence between the landlord and the Branch Manager and on the other hand to extend the period of lease and to enhance the rent on certain condition. The complaint (Annexure-12) filed by the Opposite party No. 2 in the Court of A.C.J.M. Kasiya registered as Criminal case No. 3435 of 1993 against the applicants clearly shows on its face that it is a pure and simple dispute between the landlord and tenant for ejectment and damages and does not make out any ingredient of the offence u/s 441. I.P.C. or u/s 120B. I.P.C. In fact, the complaint was filed on 12.3.1993 and the summoning order was passed on 6.11.1993 and the bank had filed a suit No. 84 of 1993 in the Court of Civil Judge, Deoria on 8.7.1993 without knowing the criminal proceeding. The learned Civil Judge was also pleased to pass an interim prohibitory order on 8.7.1993 directing the Defendant Ajai Kumar Varma Opposite party No. 2 in this application not to dispossess the Plaintiff (bank) from the disputed premises by any procedure except the procedure established by the law. After service of the temporary injunction order the Opposite party No. 2 did not file a civil suit for rent and ejectment and also did not inform the learned A.C.J.M. Kasiya about this temporary prohibitory order of the Civil Judge, Kasiya.

7. It shows the mala fide intention and the ulterior motive of the Opposite party No. 2 to harass and humiliate the applicants who are functionaries of the bank. The learned senior Advocate, Mr. S.N. Varma further contended that in view of the admitted facts and circumstances of the case no offence as defined by Section 441 of I.P.C. as amended by U.P. Act No. 31 of 1961 is not prima facie made out. Section 441 as amended by U.P. read as follows:

Whoever enters into or upon property in 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.

or, having entered into or upon such property, whether before or after the coming into force of the Criminal Laws (U.P. Amendment) Act, 1961 with the intention of taking unauthorised possession or making unauthorised use of such property fails to withdraw from such property or its possession or use, when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice, is said to commit criminal trespass.

8. Mr. Virendra Singh learned Counsel appearing on behalf of opposite party has laid stress on the words "or having entered into or upon such property, with the intention of taking unauthorised possession or making unauthorised use of such property fails to withdraw from such property, or its possession or use when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice." He has built up his argument on the basis of these words used in the amended Section 441 of Indian Penal Code, to say that the applicants' possession over the premises became unauthorised possession after termination of their tenancy but they continued in unauthorised use and failed to withdraw from such property or its possession despite the service of a notice in writing duly served on them.

9. Mr. S.N. Varma learned senior Advocate replied that the possession of the bank over the lease premises in question did not become unauthorised even after the expiry of the period of lease or after the expiry of the period of one month specified in the notice to quit and as such no offence under the later part of Section 441 was made out. He further replied that even continuance of the possession of the premises after expiry of the period of lease or after termination of the tenancy cannot be called to be unauthorised in view of the special relationship of landlord and tenant between the parties. In support of his submission he has referred to the following decisions for consideration.

10. In the case of M.C. Chockalingam and Others Vs. V. Manickavasagam and Others, , the Hon'ble Supreme Court considered the meaning of the words "lawful possession" used in Rule 13 of Madras Cinemas (Regulation) Rules (1957) in relation of a tenant or a licensee while disposing of a civil appeal. The following view of the Hon'ble Supreme Court makes the position clear:

Lawful possession cannot be established concomitant existence of a lawful relationship between the landlord and the tenant. This relationship cannot be established against the consent of the landlord unless, however, in view of special law, his consent becomes irrelevant. Lawful possession is not litigious possession and must have some foundation in a legal right to possess the property which cannot be equated with a temporary right to enforce recovery of the property in case a person is wrongfully or forcibly dispossessed from it. This Court in *Lallu Yeshwant Singh Vs. Rao Jagdish Singh and Others*, , had not to consider whether juridical possession in that case was also lawful possession. We are clearly of opinion that juridical possession is possession protected by law against wrongful dispossession but cannot per se always be equated with lawful possession.

11. A Division Bench of Andhra Pradesh High Court also considered the nature of possession of a tenant after the termination of lease while deciding a second appeal in the case of *Mogilipuvvu Annapurnaiah Vs. Malampati Narasimha Rao and Another*, :

After a lease is terminated if the tenant continues in possession without the consent or acquiescence of the lessor, such a tenant is a "tenant by sufferance". He cannot be deemed to be "holding over" when there is no proof or extension of lease in his favour. Possession of a tenant by sufferance cannot be considered as unauthorised. The possession of a tenant by sufferance is a juridical possession". The possession of such a tenant should be protected by the Courts. It is always better that a "person" is driven to a Court of law rather to permit him to forcibly evict a tenant. A tenant by sufferance is entitled to remain in possession of the demised premises till he is evicted in the course of law. Thus he is entitled to a decree for permanent injunction restraining the landlord from interfering with his possession.

Section 6 of the Specific Relief Act envisages that persons are not permitted to take forcible possession. They must obtain such possession as they are entitled to through a Court. A person, who has no title including a trespasser, cannot be evicted by force even by a person who has a right to occupy the land.

12. In case of *Ramnath v. Angan* 1984 (2) A R C 290, the Hon'ble Supreme Court reiterated that if tenant continues to occupy the premises even after expiry of period of lease without consent of land-lord he becomes tenant by sufferance and he is liable to pay rent for the period of his occupation and a suit filed for ejectment of such tenant within 12 years from the termination of the tenancy is not barred by time.

13. Mr. Virendra Singh learned Counsel for Opposite party No. 2 pointed out that these cases relied upon by the learned Counsel for applicants do not relate to any case of criminal nature and do not relate to interpretation of Section 441 of I.P.C. which deals with the offence of criminal trespass and as such meaning given to the words lawful possession cannot be made applicable to the

interpretation of the words "unauthorised possession". It is true that the cases referred to were of civil nature but they definitely related to the case between landlord and tenant and to the same circumstance in which a landlord terminates the tenancy and asks the tenant to vacate and deliver the possession and the tenant refuses to do so. The question whether possession after termination of the lease is lawful possession or is unauthorised possession definitely arises not only in civil cases but also in criminal cases. Section 441 of I.P.C. does not definitely relate to a dispute of land-lord and tenant in regard to A.Cr.R. 19 the recovery of possession and damages but it excludes such cases by intentional ingredient in its phraseology if a person enters into or upon a property with intention of taking unauthorised possession or making unauthorised use of such property fails to withdraw after receiving a written notice, only then he is said to commit criminal trespass. But in the present case, the bank has not entered into or upon the premises of the Opposite party No. 2 with intention to take or making unauthorised possession or use but it has entered therein with the consent of the landlord on the basis of duly executed lease-deed and has actually paid rent to the landlord for the period of occupation at the agreed rate and even after the expiry of the period of lease and termination of tenancy, the bank as well as Opposite party No. 2 have been in correspondence with each other for continuation of lease on enhanced rate. It is of course unfortunate that the landlord agreed to accept higher rate of rent but failed to comply the condition of his part to provide additional accommodation on the enhanced rate of rent. But the intention of Opposite party No. 2 shows that it is simple dispute of civil nature for rent and ejectment between landlord and tenant. Such a situation has not at all been made part of an offence of criminal trespass. Therefore, interpretation of the words lawful possession" or a nature of possession by the tenant after the termination of the lease as interpreted by the Hon"ble Supreme Court has to be accepted for all legal purpose either in a civil cause or in a criminal cause. The view expressed by Sri. Virendra Singh Advocate is not justified either on fact or in law.

14. Now coming to the facts and circumstances of the case once again I find on perusal of the complaint that mere mention of a notice in writing served on the applicants to deliver the possession of the premises on a specified date and time does not establish any fact to constitute the offence of criminal trespass. A bare reading of that notice makes it clear on its face that it is a dispute of rent and ejectment cognizable by a Civil Court on a motion by landlord. It does not at all fall within the ambit of Section 441, I.P.C. A reading of the statement of complainant Ajai Kumar Varma and of its two witnesses Vinod Kumar Srivastava and Salamat recorded by learned A.C.J.M. also does not make out any case for the offence u/s 441 or 120B, I.P.C. In addition to these three statements recorded by the learned A.C.J.M. only a notice of termination of tenancy and a notice u/s 441, I.P.C. were placed before him. A bare reading of these two notices also does not contain a fact which may constitute the offence either u/s 441 or Section 120B, I.P.C.

15. The statements of complainant and his witnesses recorded under Sections 200 and 202, Code of Criminal Procedure read to the effect that applicant Nos. 1 to 3 supervise the work of branch office of the bank at Kasiya and no decision is taken without their approval and the applicant No. 4 is the Branch Manager who seeks instruction from and submits report to the applicant Nos. 1 to 3. No person can come to a conclusion on the basis of these facts that since the applicant Nos. 1 to 3 are the supervisory and decision making authorities in relation to the branch office of the bank, they will fall within the ambit of criminal conspiracy and punish with the offence of Section 120B, I.P.C. Therefore, on the assessment of material which was available before the learned A.C.J.M. it becomes clear that the allegations made in the complaint or in the evidence received by the learned A.C.J.M. do not make out prima facie the ingredients of the offence punishable under Sections 441 and 120B, I.P.C. It appears to be a case in which the learned Magistrate has acted in a most mechanical manner and has not applied his mind to the allegations and evidence placed before him before he passed the impugned order of summoning. It is really surprising that the learned Magistrate could not understand that the allegations made out a case of exclusively civil nature cognizable by a competent civil Court or allegations do not give rise to a criminal action against the functionaries of the bank on a complaint by the landlord. In the case of Punjab National Bank and others Vs. Surendra Prasad Sinha, , the Hon''ble Supreme Court had occasion to consider a similar situation in a criminal appeal and made the following observations:

Judicial process should not be an instrument of oppression or needless harassment. The Court should be circumspect and judicious in exercising discretion and should take all the relevant facts and circumstances into consideration before issuing process lest it would be an instrument in the hands of private complainant as vendetta to harass the persons needlessly. Therefore, in case of default in repayment of bank loan, when the debt became time barred and the bank had adjusted the debt from the F.D.Rs. in its possession which were deposited by the guarantor by way of security, after their maturity, and a complaint was laid by the guarantor impleading the Chairman, Managing Director of the bank and a host of officers on the charges under Sections 109, 114 and 419 of the Penal Code, it would be the responsibility and duty of the Magistrate to find whether the concerned accused were legally responsible for the offences charged for, before issuing the process. Thus the complaint on the basis of which the process was issued was filed as vendetta to harass the persons needlessly, the complaint was quashed.

16. On the facts and circumstances of the case I hold that the learned Magistrate has passed the summoning order in a most mechanical manner without application of mind and has permitted the landlord to harass, and defame the functionaries of the bank-right from the Chairman down to the Branch Manager in a mischievous and frivolous complaint proceeding. This is nothing but an abuse of the process of the Court and it is a case distinguishable from the one in which the High Court directs an accused to appear and file his objection before

the summoning Magistrate for recall of his ex parte summoning order. It is a case which falls in the category of rare cases in which this Court exercises its inherent power u/s 482, Code of Criminal Procedure or extraordinary power under Article 226 of the Constitution to quash the frivolous and vexatious proceeding before the lower Court. It would not meet the ends of justice and restore the dignity and reputation of the functionaries of the bank if this Court blindly directs them to appear in obedience to the summoning order the A.C.J.M. Kasiya and file their objection as to the maintainability of the criminal proceeding. The applicant No. 1 is posted at Bombay, the applicant No. 2 is posted at Lucknow and the applicant No. 3 is posted at Deoria. It can be conceived how much public time and money shall be wasted in addition to the loss of dignity, reputation and convenience directed to appear in the Court below. The personal vendetta made by the complainant in lodging the complaint before the A.C.J.M. Kasiya with a view to teach lesson to the highest functionaries of the bank is obvious in the facts and circumstances of the case. The learned senior Advocate pointed out that the learned Magistrate has issued non-bailable warrants against the Chairman and other functionaries of the bank but this Court had passed the stay order otherwise these functionaries would have been sent to jail. The ends of justice require that not only the complaint proceedings and summoning order be quashed but the complainant-Opposite party No. 2 be made to suffer for his vexatious and frivolous act by awarding deterrent cost by way of compensation to the bank. I assess these costs at Rs. 5,000.

17. Therefore, for the aforesaid reasons and in the extraordinary circumstances of this rare case, application u/s 482, Code of Criminal Procedure is hereby allowed and the impugned summoning order as well as non-bailable warrants issued against the applicants and the criminal proceedings in complaint case No. 3435 of 1993, S. Subramaniam and Ors. v. State of U.P. and Anr. pending in the Court of A.C.J.M. Kasiya are hereby quashed and the Opposite party No. 2 is hereby directed to deposit in the Court of A.C.J.M. Kasiya Rs. 5,000 (Rupees five thousand only) as cost within two months from the date of this judgment, failing which it shall be realised as fine in accordance with the provisions of the Criminal Procedure Code and upon deposit this amount shall be paid to the Central Bank of India through the Branch Manager of the branch at Kasiya for being credited to the funds of the bank.

18. Let a certified copy of this judgment be sent to the learned A.C.J.M. Kasiya at Deoria within 7 days for information, necessary action, future guidance and compliance report to the Registrar of this Court within reasonable time.