

(1979) 12 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : Criminal Revision No's. 13 of 1978 and 104 of 1979

Sahnu Ram

APPELLANT

Vs

Smt. Harfi and Another
 Smt. Harfi Vs State and
Another

RESPONDENT

Date of Decision : 28-12-1979

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107, 145, 145(1), 147, 453
Penal Code, 1860 (IPC) — Section 34, 447, 448

Citation : (1980) ShimLC 89

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Advocate : K.D. Sud, in Cr.R. 13/78 and Bhawani Singh, in Cr.R. 104/79, for the Appellant; Bhawani Singh in Cr.R. 13/78, A.K. Chopra, General and K.D. Sud, in Cr.R. 104/79, for the Respondent

Final Decision : Dismissed

Judgement

V.D. Misra, C.J.—This order will dispose of Criminal Revision No. 13 of 1978 and Criminal Revision No. 104 of 1979, as common questions of fact are involved in these two cases.

2 The facts, in brief, are that Sahnu Ram had taken on rent a room and a kitchen from Smt. Harfi. He was carrying on his tailoring business in that room. Smt. Harfi was anxious to get rid of Sahnu Ram. It is alleged that on 21-5-1977 Harfi along with one Bainj Ram started dismantling the roof of the shop. When Sahnu Ram objected, they threatened him. He reported the matter to the police and a case u/s 448 was registered against Harfi and Bainj Ram.

3. On 23-5-1977 when Sahnu Ram went to his shop, he found that in addition to his lock another lock had been put on the door of the shop by the land-lady. Sahnu Ram asked the land-lady to remove her lock. Instead of removing her lock, Harfi and Bainj Ram threatened Sahnu Ram with dire consequences. As a result thereof Sahnu Ram moved an application under Sections 145/147/107

Code of Criminal Procedure against Harfi and Bainj Ram on 27-5-1977. Requisite order under Sub-section (1) of Section 145 Code of Criminal Procedure was passed by the Executive Magistrate and the parties were directed to produce evidence. During the course of proceedings, the learned Magistrate by his order dated 16-2-1978 held that "the case application is hereby dismissed and proceedings are terminated. Both the Respondents are hereby discharged". The only reason given for passing this order was that there was no imminent danger of breach of peace since the passion of the parties had cooled down during the pendency of the case and because "a period prescribed under the law was expired." Sahnu Ram challenges this order in Criminal Revision No. 13 of 1978.

4. After investigating the report lodged by Sahnu Ram, the police filed a charge-sheet against Harfi and Bainj Ram. Shri P.D. Goel, Judicial Magistrate Ist Class, Rohru, District Simla, convicted them under Sections 447/34 I.P.C However, benefit of Probation of Offenders Act was given to the accused and they were released after due admonition on 14-12-1978.

5. Sahnu Ram made an application on 21-12-1978 requesting the Magistrate to restore his possession u/s 456(1) of the Code of Criminal Procedure, 1973. By order dated 31-7-1979, the Magistrate directed restoration of possession. This order is challenged by Smt. Harfi in Criminal Revision No. 104 of 1979.

6. I will first deal with Criminal Revision No. 104 of 1979 since a decision in favour of Sahnu Ram in this case would automatically result in the dismissal of his Criminal Revision No. 13 of 1978 as infructuous.

7. Shri Bhawani Singh, learned Counsel for Smt. Harfi, submits that the learned Magistrate had no jurisdiction to pass the impugned order since it was passed after the expiry of one month of the decision of the case. Shri K.D. Sud, learned Counsel for Sahnu Ram, contends that the Magistrate had the jurisdiction to pass the impugned order, and, in any case, this Court has the jurisdiction to pass such an order.

8. Section 456 of the Code of Criminal Procedure 1973, reads as under:

456. (1) When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that by such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property:

Provided that no such order shall be made by the Court more than one month after the date of the conviction.

(2) Where the Court trying the offence has not made an order under Sub-section (1), the Court of appeal, confirmation or revision may, if it thinks fit, make such order while disposing of the appeal, reference or revision, as the case may be.

(3) Where an order has been made under Sub-section (1), the provisions of Section 454 shall apply in relation thereto as they apply in relation to an order under s 453.

(4) No order made under this section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

9. Under the Code of Criminal Procedure, 1898, Section 522 made a provision to restore possession of immovable property. It was in the following terms:

522. (1) Whenever a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation and it appears to the Court that by such force or show of force or criminal intimidation any person has been dispossessed of any immovable property, the Court may, if it thinks fit when convicting such person or at any time within one month from the date of the conviction, order the person dispossessed to be restored to the possession of the same.

(2) No such order shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.

(3) An order under this section may be made by any Court of appeal, confirmation, reference or revision.

10. It will be apparent that changes in phraseology have been made. The first change to be noticed is that whereas under Sub-section (1) of Section 522 the Court was given discretion to pass the order of restoration within one month from the date of conviction, a proviso has now been added to Sub-section (1) of Section 456. This proviso is imperative and directs a Court not to pass any order after one month of the date of the conviction. It is true that under the old section there was a conflict of opinion whether a Court could pass an order of restoration after one month of the date of conviction, but the change in phraseology suggests that the conflict has been set at rest by directing the Magistrates not to pass such an order after the expiry of one month of the date of the conviction.

11. The question now arises whether this Court has the jurisdiction to pass a similar order. It may be noticed that there was a conflict on this aspect also under the old section. Whereas High Courts of Bombay, Patna and Allahabad (See *Fida Hussain Vs. Sarfaraz Hussain*, and *Nihal Singh Vs. Emperor*, held the view that the appellate or revisional Courts could pass a similar order, some of the High Courts took a different view.

12. I need not go into the history of the conflict and the reasons given by various High Courts since the matter stands concluded by a decision of the Supreme Court in *H.P. Gupta Vs. Manohar Lal and Others*. After noticing the view of various High Courts under the old section, the Supreme Court construed Sub-section (2) of Section 456 of the present Code in the following terms:

The language of Sub-section (2) clearly shows that the same is applicable to a

case where a conviction has been recorded by the trial Court and the trial Court has through mistake or inadvertence omitted to make an order for restoration of possession of immovable property to the complainant or has refused to pass such order either because the offence was not attended by criminal force or show of force or by criminal intimidation or because the application in that behalf was made after expiry of 30 days and an appeal or revision either against the conviction or the order refusing restoration has been preferred; in such a case Sub-section (2) provides that the appellate Court or the revisional Court while disposing of such appeal or revision may make an order restoring possession of the immovable property to the complainant. The change in phraseology clearly suggests that Parliament did not intend to prescribe any limitation on the powers of the appellate Court or revisional Court; the words are not "when convicting" or "when upholding the conviction" but the words are "while disposing of the appeal, reference or revision" and these would mean in continuation of the disposal of the appeal, reference or revision and these words cannot be regarded as importing a limitation on the power to the effect that such order must be incorporated in the body of the judgment disposing of the appeal, reference or revision. In other words, the appellate or revisional Court acting u/s 456(2) will have jurisdiction or power to pass the order for restoration of possession at any time but it has to be exercised with discretion within reasonable time of the disposal of the appeal, reference or revision.

(Emphasis supplied).

It is thus plain that this Court, while exercising its revisional power even on the question whether the Magistrate has rightly passed an order of restoration, can itself pass an order of restoration where the Magistrate's order is found defective. In this view of the matter, though I set aside the impugned order of the Magistrate, I direct the Petitioners to restore the possession of the premises in dispute to Sahnu Ram.

13. In view of the decision of Criminal Revision No. 104 of 1979, Criminal Revision No. 13 of 1978 is dismissed as infructuous.