
(1991) 12 MP CK 0018
In the Madhya Pradesh High Court
Case No : Criminal Rev. No. 574 of 1987

Tijulal Ghudan Pawar

APPELLANT

Vs

State of Madhya Pradesh

RESPONDENT

Date of Decision : 12-12-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 448

Citation : (1992) 37 MPLJ 260 : (1992) MPLJ 260

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

Bench : Single Bench

Advocate : Surendra Singh, for the Appellant; D.D. Bhargava, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Chawla, J.

This is revision by an accused challenging his conviction and sentence for the offence of house trespass u/s 448, Indian Penal Code.

The prosecution story was that on 1-11-1982 appellant/accused Tijulal had agreed to sell half portion of his house in village Saletoka P. S. Balaghat to a Sub-Engineer named Shishir Kumar Das (P.W.7) for Rs. 10,751/- and had also received earnest money of Rs. 151/-; vide agreement, Ex.P-5. This was followed by an oral agreement whereby the applicant agreed to sell the entire house for Rs. 21,000/- Shishir Kumar Das paid from time to time upto July 1983 a total consideration of Rs. 18,551/-. He also received actual possession of the house in April, 1983. After Shishir Kumar Das had remained in possession of the house for about 2 years, the applicant in April 1985 forcibly entered into the possession of the house by breaking open its lock and started to live in it with his family. Shishir Kumar Das (P.W.7) was transferred to another place and was not present when the house was actually broken open. His wife Smt. Anita Das (P.W.6) who lived in the village protested to the applicant but the latter greeted her with

abuses. The applicant continues thereafter to live in the house with his family. On these facts the trial Magistrate convicted the applicant of the offence u/s 448, Indian Penal Code and sentenced him to simple imprisonment for 3 months. In appeal carried by the applicant, the learned Sessions Judge, Balaghat affirmed the applicant's conviction for the offence u/s 448, Indian Penal Code but reduced the sentence by substituting fine of Rs. 1,000/-, in default to simple imprisonment for 3 months, for the substantive sentence of simple imprisonment for 3 months. Now the accused has come in revision to the High Court.

Shri Surendra Singh, learned counsel for the applicant/accused, confined his submission to the question of sentence. It was argued by him that complainant Shishir Kumar Das had admittedly not paid the entire price of Rs. 21,000/-. Having obtained possession of the house, the complainant had unjustly delayed the payment of full price. In the circumstances the applicant in desperation and under provocation had taken back possession of the house. It was argued that considering the circumstances of the case even the sentence of fine of Rs. 1,000/- awarded by the learned Sessions Judge was too harsh and severe and the applicant deserved to be released on probation.

It is an admitted position that the complainant had paid the bulk of the price i.e. Rs. 18,551/- out of a total of Rs. 21,000/-. The complainant had also received the possession of the house in April 1983. He had locked the house and on the evidence accepted by the Courts below, the complainant had fixed doors and windows to the house and had also got some reconstruction work done. He had also put some building material inside the house. Taking advantage of the absence of the complainant, the applicant broke open the lock of the house and re-entered into its possession with his family, even though the complainant was earlier in possession of the house for the last two years. If the complainant was not ready to pay the balance price; about which also there was really no evidence, the proper remedy of the applicant was to bring a suit for recovery of the balance price. On the other hand, the applicant chose to take the law into his own hands. He acted in a very highhanded manner in forcibly breaking open the lock of the house and in re-entering into its possession. He greeted the complainant's wife with abuses when she came to protest to him. There is no doubt that the intention of the applicant in forcibly re-entering into the possession of the house was to annoy complainant Shishir Kumar Das, albeit the latter was absent at the precise time of the trespass. The law does not require that person intended to be annoyed should be actually present at the time of the trespass. Reference may here be made to the Supreme Court decision in *Rash Behari Chatterjee Vs. Fagu Shaw and Others*, In that case the complainant had obtained possession of disputed land under a decree. The land was lying vacant thereafter. The accused was found making preparations for construction of bamboo structures on that land about 13 days thereafter during night time when the complainant was absent. It was held that the accused had committed the offence of criminal trespass and that the law did not require that the intention must be to annoy a person who is actually present at the time of the trespass.

Non-payment of balance of the price could not be a justification for unlawful act of breaking open the lock of the house and forcibly re-entering into its possession. In *Evaristo Antonio v. State*, AIR 1968 Goa Daman Diu 14, an accused was evicted from a house under an order which was subsequently held in writ proceeding to be illegal. The accused had meanwhile re-entered into the house after eviction. It was held that the order of eviction was valid when the accused was evicted. The act of accused in re-entering into the house fell prima facie within the mischief of criminal trespass. The accused was directed to be tried on that charge. So also in *Palani Pannadi and Others Vs. Nanjammal*, (Madras), where the decree holder was placed in possession of the house, the act of the judgment debtor in entering into the house by breaking open its lock in the absence of the decree holder, was held to amount to the offence of house trespass u/s 448, Indian Penal Code.

The applicant in this case is an adult mature person. He took the law into his own hands and acted as a ruffian by breaking open the lock of the house and starting to live in it with his family in open defiance of law. He had already devoured the bulk of the price. Leniency was shown to him by the lower appellate Court which substituted substantive sentence of imprisonment imposed by the trial Court with sentence of fine. No further leniency deserves to be shown to him. Probation is not meant for ruffians. There is no ground to interfere with the sentence.

For the foregoing reasons, there is no force in this revision. It is dismissed.