Rash Behari Chatterjee vs Fagu Shaw & Ors on 28 April, 1969

Equivalent citations: 1970 AIR 20, 1970 SCR (1) 425

Author: S.M. Sikri

Bench: S.M. Sikri, R.S. Bachawat, V. Ramaswami

PETITIONER:
RASH BEHARI CHATTERJEE

Vs.

RESPONDENT:
FAGU SHAW & ORS.

DATE OF JUDGMENT:
28/04/1969

BENCH:
SIKRI, S.M.
BENCH:
SIKRI, S.M.
BACHAWAT, R.S.
RAMASWAMI, V.

CITATION:
1970 AIR 20 1970 SCR (1) 425
1969 SCC (2) 716

ACT:
Indian Penal Code (Act 45 of 1860) ss. 441 and 447-Criminal Trespass-Actual presence of person who is intended to be annoyed if necessary.

HEADNOTE:
On the success of a suit filed in 1951 by the appellant he obtained actual physical possession of a land in 1963 by evicting the respondents with police help. The respondents trespassed on the land after two weeks from 'their ejectment. and they were found making preparations for construction of bamboo structures. The respondents were convicted under s. 441/447 I.P.C. by the Magistrate, and the conviction was affirmed by the Sessions Judge. But the High Court, on a revision acquitted the respondents as it was of the view that the appellant was not in actual possession of the property and that the complainant must not only be in actual possession but also be present at the time of the

trespass so as to bring the offence undeR s. 441/447 I.P.C.
In appeal this Court,
HELD :-The High Court was in error in holding that the appellant was not in actual possession of the property. The land in dispute was lying vacant after the appellant obtained possession and the actual possession must be of the appellant. Further the law does not Require that the intention must be to annoy a person who is actually present at the time of the trespass.
On the facts of this case there could not be any doubt that the intention of the respondents was to annoy the appellant who was in possession of the case land. There could have been no hope on the part of the respondents that they would be able to stay in possession of the land. After twelve years of litigation the appellant was able to obtain Possession, and only after two weeks after that day the respondents chose to trespass and start construction. Any other dominant intention could not be found which prompted the trespass. [427C, F]
Mathuri and OtherS v. State of Punjab, [1964] 5 S.C.R. 916; 927, followed.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 5. of 1967.

Appeal by special leave from the judgment and order dated May 11, 1966 of the Calcutta High Court in Criminal Revision No. 188 of 1966.

Sukumar Ghose, for the appellant.

D. N. Mukherjee, for respondents Nos. 1 to 8. P. K. Chakravarti, for respondent No. 9.

The Judgment of the Court was delivered by Sikri, J. This appeal by special leave is directed against the judgment of the High Court at Calcutta allowing the criminal revision and acquitting the respondents of the charge under S. 447, I.P.C.

The only question which arises in the, present appeal is whether on the facts and circumstances of the case the intent to annoy the appellant has been established. The law on the point is now settled by this Court in Mathuri and Others v. State of Punjab (1). Das Gupta, J., speaking for the Court, after reviewing the authorities, stated the law thus :

> "The correct position in law may, in our opinion, be stated thus : In order to establish that the entry on the property was with the intent to annoy, intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; that it is not sufficient for that purpose to show

> merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult, and that this likely consequence was known to the person entering; that in deciding whether the aim of the entry was the causing of such annoyance, intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and including also the probability of something else then the causing of such intimidation, insult or annoyance, being the dominant intention which prompted the entry."

This judgment was not brought to the notice of the High Court in this case. In view of this judgment it is not necessary to re. view the earlier High Court cases. The appellant gave the history of the dispute between himself and the respondents in his evidence. He stated that he and his three brothers filed title suit No. 404 of 1951 in the first Court of Munsiff at Serampur against the respondent Fagu Shaw praying for ejectment and khas possession of the land in dispute; the, respondent Fagu Shaw contested the 'suit; on May 23, 1954, a decree of ejectment was passed; against the judgment and decree the respondent Fagu Shaw preferred an appeal before the District Judge and the appeal was dismissed; the respondent Fagu Shaw preferred a second appeal to the Calcutta High Court which was dismissed summarily; the appellant executed the decree and in September 1962 when the Nazir of Serampur Civil Court with process servers went to take delivery of possession of the case, (1) [1964] 5 S.C.R. 916, 927.

land the respondent resisted and refused to give possession; however on February 3, 1963, the Nazir with police help went to the spot for delivery of possession and the appellant obtained actual physical possession. The appellant further stated that the land was in their possession from February 3, 1963 upto February 17, 1963, when the present occurrence took place. It appears that the respondents trespassed on the land on the, night of February 16, 1963, and on February 17, 1963, they were found making preparations for construction of bamboo structures on the case land and some bamboo pegs had already been posted.

Now the question arises whether the intention of the respon- dents was to annoy the appellant or not within the meaning of s. 441, I.P.C. It seems to us that on the facts of this case there cannot be any doubt that the intention of the respondents was to annoy the appellant who was in possession of the case land. There could have been no hope on the part of the respondents that they would be able to stay in possession of the land. The litigation started in 1951 and it was on February 3, 1963 that the appellant was able to obtain possession. It is only after two weeks after that day that the respondents chose to trespass and start construction. In this case we cannot find any other dominant intention which prompted the trespass. The High Court seems to have proceeded on the footing that the appellant was not in actual possession of the property and further that the law requires that the complainant must not only be in actual possession but also be present at the time of trespass so as to bring the offence within the provisions of s. 441/447, I.P.C. In our view the High Court was in error in holding that the appellant was not in actual possession of the property. The land in dispute was lying vacant after the appellant obtained possession and the actual possession must be of the appellant. Further the law does not require that the intention must be to annoy a person who is actually present at the time of the trespass. In the result the appeal is allowed, the

judgment of the High Court set aside and the judgment and order of t he Magistrate 1st Class Serampur, which was affirmed by the learned Additional Sessions Judge, Hoogly, restored. We may mention that the Magistrate sentenced the respondents to pay a fine of Rs. 100 each and in default to suffer rigorous imprisonment for one month. We are of the view that the Magistrate was rather lenient to the respondent Fagu Shaw who, seems to be an inveterate trespasser, and in the circumstances of this case the Magistrate should have sentenced him to imprisonment however short. Y.P. Appeal allowed.