

Ram Nath And Ors. vs The State on 23 May, 1952

Equivalent citations: AIR1953ALL725, AIR 1953 ALLAHABAD 725

ORDER

Beg, J.

1. One Mathura Kahar filed a complaint against Ram Nath Bhurji, his wife Shrimati Seeta, and Pyarey, Barsati and Kishori servants of Ram Nath, Mathura belongs to Azamgarh District and came to Lucknow about 4 or 5 years ago and got employed in the shop of Ram-nath at Kaiserbagh. It is alleged that one year previous to the alleged incident, he opened his own private business and constructed a shop close to Jai Hind Cinema on the Bisheshwar Nath Road. The case of Mathura was that the plot of land on which his shop was built was acquired by him through Ramnath, who fraudulently got the lease executed in his own name. According to his allegations, on 25-4-1951, at about 11 A.M. all the five persons mentioned above formed an unlawful assembly for the purpose of dispossessing him. They went to his shop, beat him and his brother Ramai and took forcible possession of his shop.

2. The defence of the accused was that the shop belonged to them, that the rent receipts of the shop were in the name of Ramnath and they were asserting their own rights in bona fide manner and were not guilty of any offence.

3. The story narrated by the complainant P. W. 1 Mathura was corroborated by the independent evidence of reliable persons. The names of witnesses who corroborated him are Shri Lati Bhusan (P. W. 2), Munney (P. W. 3), Mrs. R. Sollose (P. W. 4), Shri T.R. Joseph (P. W. 5), Maiku LaJ (P. W. 6) and Ismail (P. W. 7). The evidence of these witnesses has been believed by both the Courts and the concurrent findings given by them are that Mathura was in peaceful possession of the shop, that on the day in question the applicants formed an unlawful assembly, went to the shop and took forcible possession of it. In view of the said findings the applicants have been convicted under Sections 147 and 448, I. P. C. Under Section 147, I. P. C. applicant No. 1 has been ordered to undergo three months' R. I. & under Section 448, I.P.C. he has been ordered to pay a fine of Rs. 200/- only. The remaining applicants were sentenced to pay a fine of Rs. 100/- each under Section 147, I. P. C. and to pay a fine of Rs. 50/- each under Section 448, I. P. C.

4. Having heard the learned counsel for the parties at length I am of opinion that this revision must be dismissed. The findings arrived at by both the Courts are based on evidence on record. Those findings are neither perverse nor unreasonable. It is clear that Mathura had been in peaceful possession of the shop for about a year. It is further clear that the applicants instead of ejecting Mathura through a Court of law took the law into their own hands and forcibly ejected him from his shop and took possession of it.

5. It has been argued on behalf of the applicants that in view of the acquittal of the applicants of the offences under Sections 323, 379 and 504, I. P. C. it cannot be said that the intention of the applicants was to commit any offence or to intimidate, insult or annoy any person in possession of his property. It is no doubt true that they have been acquitted under the aforesaid sections, but the trial Court has clearly given a finding to the effect that Mathura was beaten by the applicants and the appellate Court has upheld the conclusions arrived at by the trial Court. In view of the said findings the mere fact that they were acquitted under the aforesaid sections is quite immaterial. The fact remains that the applicants did resort to wrongful force for taking possession of the said shop. They had absolutely no justification for doing it. It has been held in -- 'Keshar Singh v. Rex', AIR 1950 All 157 (A), that "it would be impossible to produce direct evidence of the Intention. The intention has in most cases to be inferred from the circumstances. Where the probable consequence of the act alleged to be criminal trespass was to cause annoyance to the persons in possession it will be presumed that it was committed with that intention. The presumption will hold good if it is not rebutted."

6. It has further been argued on behalf of the applicants that Ramnath was the real owner of the shop and that if the title vested in him, he cannot be guilty of any offence, if he took forcible possession of the property. I do not think that there is any merit in this argument. Where a person has been in peaceful possession of property for a fairly long time, it is not open to the claimant of the property to resort to force for the purpose of ejecting him. As has been held in -- 'Sm. Ram Kali v. Gaya Prasad', AIR 1950 All 653 (B):

"Section 441 is designed to protect possession as distinguished from title in the sense that the question in whom title to the land or property vests is foreign to the offence. The mere fact that the accused put forward a bona fide claim to the property would not save him from the consequences of the entry into the house in possession of the complainant if his intention was to take the property out of the complainant's possession without her consent and to cause wrongful gain to himself or wrongful loss to her."

7. I understand that Ramnath has filed a civil suit for determination of the question of title. The civil Court is, therefore, the proper forum for giving a finding on that particular point. So far as the criminal Courts are concerned, they are primarily concerned, with the factum of possession and in view of the evidence adduced on behalf of Mathura in this case, it must be held that possession was clearly with him.

8. Under the above circumstances I am of opinion that there is no substance in this revision. It is accordingly dismissed. Ramnath applicant is on bail. He shall surrender forthwith and serve out his sentence.