

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Ananya Bandyopadhyay

C.R.A. 561 of 2003

**Chanchal Banerjee and Anr.
-Vs-
The State of West Bengal**

For the Appellants : Mr. Pradip Roy

For the State : Mr. Avishek Sinha

Heard on : 06.02.2024, 13.02.2024, 03.04.2024,
15.04.2024, 08.08.2024

Judgment on : 05.11.2024

Ananya Bandyopadhyay, J.:-

1. This appeal is preferred against judgment and order dated 19.11.2003 passed by the Learned Additional Session Judge, Special Court, Hooghly in Criminal Appeal No.19 of 1998 which arose out of C.R. Case No.203/85 thereby dismissing the appeal of the appellants for committing offence punishable under Sections 448/427 of the Indian Penal Code and also confirming the order dated 29.04.98 passed by the Learned Sub-Divisional Judicial Magistrate, Chandernagore, as regards the release of the appellants on probation of good behavior and conduct as per provisions of "Probation of offenders Act".
2. C.R. Case No.203 of 1985 was registered on the basis of a complainant lodged by one Anadi Nath Mukherjee. The complaint case in brief was that

the complainant, Anadi Nath Mukherjee, filed a civil suit being T.S. No.233 of 1981 against the appellants and got ex-parte decree for eviction from the disputed house in plot no.843, Khatian No.1444 of Mouza Bandipur and thereafter in execution of the said Decree, possession of the disputed house was handed over to him by evicting the appellants on 27.05.95 through Court with the help of Process Server and Police personnel in Title Execution Case No.4 of 1984. The complainant and his wife came to occupy the disputed house and kept certain articles like radio, one torch, beddings etc., in the house and stayed there till 7 p.m. On 28.07.95 and thereafter they went to Baranagore to fetch other house hold articles after locking 3 rooms and the door of the house. Thereafter on 30.07.85 at about 12:00 noon on their return they found the appellants to be in possession of the disputed house by breaking the locks of the rooms, keeping cattles etc., in the said rooms. The complainant's wife submitted a written complaint against the appellants, on the basis of which cognizance was taken.

3. The substance of accusation was read over and explained to the appellants under Section 251 of the Code of Criminal Procedure and as the appellants pleaded not guilty, they were placed on trial.
4. The prosecution cited 4 witnesses and exhibited certain documents marked as Exhibits 1 to 9. The appellants examined 3 defence witnesses.
5. Considered the submissions of the Learned Advocate representing the Appellants as well as the State.
6. The impugned judgment and order dated 29.4.98 passed in C.R. Cased No. 203 of 1985 inter alia observed as follows:

“Both the convicts appear to be repented. The convicts, Smt. Gita Banerjee, is an old aged widow and accused Chanchal Banerjee earns his livelihood by running a poultry firm. There was long pending dispute over the disputed house between the parties and there were civil suit and counter civil suit over the said house. Both the convicts have faced trial in both G.R. Case No. 740/85 and C.R. Case No. 203/85 for long period since 1985. Ld. Lawyer for the complainant in C.R. Case No. 203/85 has submitted that as per Section 357 Cr.P.C. the complainant / de facto complainant is entitled to get compensation from the convicts. Considering long pendency of this case and facing trial of both cases by these convicts and the nature of offence and subject matter in dispute I am not inclined to pass any order for compensation under Section 357 Cr.P.C. But since the accused/convicts reentered in the disputed house by6 show of force by way of breaking the locks, the de facto complainant, Smt. Bani Mukherjee and the complainant Anadi Nath Mukherjee in the said C.R Case are entitled to get order for restoration of possession of the said house as per provisions of Section 456 Cr.P.C.

Considering my above observations and the convicts having no dark antecedents I am of the view that the accused/convicts may be released on probation of good conduct under provision of the Probation of Offenders’ Act subject to report of the Probation Officer, Hooghly. Since both these convicts have been convicted in both cases i.e. G.R. 740/85 and C.R. 203/85 in the offences punishable under Sections 448 and 427 IPC and in view of the doctrine of double jeopardy these convicts should not suffer sentences to be passed for the same offences twice. To avoid this legal complexity the convicts

are required to be directed to the effect that they need not suffer any sentence in CR Case No. 203/85 if they will suffer sentence or undergo satisfactory period of probation, if any, in this G.R Case No. 740/85.

Hence,

Ordered

that the accuseds namely Chanchal Banerjee and Smt. Gita Banerjee are held guilty in the offences punishable under Sections 448 and 427 IPC and are convicted under Section 255 Cr.P.C. In view of my observations in the body of judgment, instead of passing any sentence at this stage, the convicts may be enlarged on probation of good conduct and behaviour as per provisions of the Probation of Offenders' Act subject to the report of the Probation Officer, Hooghly. Accordingly, the Probation Officer, Hooghly is directed to enquire and submit the report by 8.6.98 as per provisions of Probation of Offenders' Act.

The O.C. Haripal P.S. is directed to restore vacant possession of the disputed house and other adjoining land in plot no. 843, Khatian No. 1444 of Mouza Bandipur measuring 26 decimal which was the suit property in T.S. 233/8 and T.Ex. 4/84 of the Court of the Ld. Munsif, 2nd Court, Chandernagore, to the de facto complainant Smt. Bani Mukherjee or her husband, Sri Anadi Nath Mukherjee after evicting the convicts and their family members or men by force by 27.5.98 as per provision of Section 456 Cr.P.C. Let a copy of the order portion be sent to the O.C. Haripal P.S. for compliance and report by the date fixed. To 8.6.98 for appearance of the convicts and report of Probation Officer. Let a copy of the judgment be handed over to the convicts free of cost."

7. PW-7 during his cross-examination stated as follows:

“There were some bushes near P.O. The residential houses were at a little distance from the P.O. There is not note in my C/D that there are houses in and around the P.S. I did not examine close-door neighbours of the P.O. I did not seize any documents during investigation. I did not examine any person named Madan Chatterjee. There is no note in my CD that Madan Chatterjee saw the incident. Not a fact that Madan Chatterjee saw the incident. Not a fact that the charge-sheet was submitted without proper investigation.”

8. The evidence of the prosecution witnesses as well as that of the Investigation Officer failed to prove the act of the present appellants of re-entering into the disputed premises. The incident which occurred on 27.8.85 mentioned, in the presence of the localites, the appellants had vacated the suit house alongwith their belongings. Thereafter PW-5 i.e. Anadi Nath Mukherjee along with his family members entered the suit property and stayed there for a night. On the following day they left the room after locking the same.
9. PW-6 was asked to keep vigil on the said house. PW-6 further deposed the appellants entered the house removing the lock, however, did not inform the same to the police. On 30th July on his return PW-5 was refused to enter the house. Anadi Mukherjee and Madan Chatterjee were present at the spot when Anadi Nath Mukherjee took possession of the house.
10. PW-7 did not examine either Anadi Nath Mukherjee or Madan Chattejee.

11. Apart from PW-6 nobody witnessed such coercive and unlawful occupation of the suit premises, who refrained from informing the police instantaneously being entrusted to be vigilant.
12. The prosecution failed to justify the claim of the complainant and accordingly the appeal is allowed.
13. The impugned judgment and order dated 29.04.1998 passed in C.R Case No. 203 of 1985 is set aside.
14. Accordingly, CRA 561 of 2003 is disposed of.
15. There is no order as to costs.
16. Trial Court records along with a copy of this judgment be sent down at once to the Learned Trial Court for necessary action.
17. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)