

Vijay Kumari Magee

Vs

S.M. Rao and Others

Criminal Appeal No. 34 of 1996

(G.N. Ray, B.L. Hansaria JJ)

11.01.1996

JUDGEMENT

HANSARIA, J.:-

1. Leave granted.

2. The appellant has a bundle of grievances, starting from the acquittal of respondent No. 1 (Principal Manager, Victoria Senior Secondary School) by Addl. Sessions Judge, Delhi, before whom appeal was filed by this respondent against her conviction by the Metropolitan Magistrate under Section 341 of the Penal Code. Against that order of acquittal, the appellant approached the High Court in appeal; but the High Court has dismissed the same on the ground that the appellant has no right to file appeal. Some observation has also been made on the merits. The High Court, ultimately found no illegality in the order of acquittal passed by the learned Addl. Sessions Judge.

3. As the alleged offence related to locking of a room which was admittedly in possession of the appellant at one point of time, other grievances of the appellant are in a way consequential to the wrong which according to her, was committed in keeping her out. There were some goods in the room; and so damages for non-return/stealing of the same have been claimed. The further links in the chain of grievances are that because of the high handedness the appellant even came to be dismissed from her job of teacher in Queen Mary School, though the room which was being occupied was a part of the hostel of Victoria Senior Secondary School. The dismissal caused loss of the emoluments of the job in question; it also resulted in denial of Queen Mary. The appellant would, therefore, like to get back her job, not only of a teacher, but of the Principal and the entire pay of that post with interest @ 18% per annum. She has further prayed that she had to file this and another litigation for about 1 & 1/2 decades by now and so, appropriate amount should be awarded towards expenditure of litigation, apart from damages for mental agony undergone. Re-imburement of the rent, which she had to pay to accommodate herself in alternative place is also desired.

4. The grievances are thus indeed manifold and the appellant thought that she herself is better placed in seeking appropriate orders relating to the aforesaid alleged wrongs, because of which assistance of even senior counsel came to be denied by her even though ordered by Court.

5. Keeping in view the mental anguish of the appellant, we heard her to her satisfaction; but we would have to disappoint her as apart from the question relating to legality or otherwise of acquittal of respondent No. 1 all other matter cannot just be hone into in this appeal. They have to form part of separate proceeding (s) if the appellant would deem fit and proper to initiate the same. We have said so because the loss of job etc. in another school can have by no stretch of imagination, any

relation with what was done by respondent No. 1 in locking the room which she was occupying. There is no casual relation between the loss of job and locking of room. Similar is the position qua other grievances. We would therefore, confine in this appeal to the question relating to acquittal of respondent No. 1; and the claim for damage to the goods, if we were to be satisfied from the materials on record that the same were stolen or wrongly appropriated.

6. We heard Shri Javeri, learned senior counsel appearing for the respondent, on the merits of the acquittal order passed by the Addl. Sessions Judge, and not on the view taken by the High Court that the appeal filed before it was not maintainable.

7. The skeletal facts relating to the above aspect are that the appellant was admittedly in occupation of a room in the campus of Victoria School. A letter was addressed to her on 1st October, 1982 that pursuant to the decision of the Managing Committee of the School not to allow any outsiders to reside in the campus she was to vacate the room provided to her in the hostel within a week. This letter was replied by the appellant on 4th October by praying for extension of time to leave the room, stating that the notice to vacate was rather short. The appellant not having vacated the room, it was locked by the end of October.

8. The appellant first approached Civil Court seeking permanent injunction on the school authorities to allow her to possess the room. This proceeding was initiated in November, 1983. In that suit an application for temporary injunction under Order 39 Rules 1 and 2 C.P.C. was filed, which application came to be rejected by the subordinate Judge. The appellant preferred an appeal in the Court of Senior Subordinate Judge, who by its judgment and order dated 24-1-1984 dismissed the same with the following observations:

"This room was allotted to her on compassionate and humanitarian grounds but due to certain reasons the respondent chose to terminate the licence and asked the appellant to vacate the same. After the termination of her licence even if the appellant is helped to put in possession of the disputed room she has no legal right to obtain the injunction against the respondent in as much as her possession now is in the nature of trespasser."

The appellant thereafter withdraw the main suit, with permission to file a suit for possession, which was, however not done.

9. Recourse to criminal Court was thereafter taken by filing a petition under Section 145 Cr. P. C. in September, 1984 which came to be dismissed by the learned Sub-Divisional Magistrate, against which revision was preferred, which was rejected, vide order dated 27-4-1985.

10. The third round started in October, 1993 by filing a complaint alleging, inter alia, wrongful restraint, which has been made punishable by Section 341. The Metropolitan Magistrate took cognizance of the offence and convicted respondent No. 1 under that section which, as already noted, came to be set aside by the learned Addl. Sessions Judge, against which order the High Court was approached, who passed the impugned judgment.

11. The acquittal is on the ground that as the appellant had been refused temporary injunction and in the appeal against that order, she was described as a trespasser, whereafter no further civil proceeding was taken, no offence under Section 341 is made out inasmuch as for an action to amount to "wrongful restraint", the person concerned must have "right to proceed", in the direction

in question, as would appear from what has been stated in Section 339, which has spelt out what is wrongful restraint. This view is correct and according to us, therefore no illegality was committed in acquitting respondent No. 1.

12. As from materials on record we are not satisfied if respondent No. 1 had in any way appropriated or stolen the belongings of the appellant which were in the room we are not in a position to award any damages for the same. It may be pointed out that the order passed on 24-7-1995 by this Court has well taken care of the grievance of the petitioner relating to her belongings. Nothing further is remained to be stated in this regard.

13. In the result the appeal is dismissed. The room in question would be put to such use as the authorities of Victoria Senior Secondary School would desire, after opening/braking lock of the appellant, if there be any. Appeal dismissed.