

us that the view taken by the learned Judges constituting the Letters Patent Bench is incorrect.

Accordingly none of the contentions advanced on behalf of the petitioner is correct and I would dismiss the petition, but in the circumstances of the case leave the parties to bear their own costs.

PREM CHAND PANDIT, J.—I agree.

K. S. K.

Atma Singh
v.
The Chief
Settlement Com-
missioner and
others
Capoor, J.

REVISIONAL CRIMINAL

Before H. R. Khanna; J.

MATA DIN SINGH;—Petitioner.

versus

THE STATE;—Respondent.

Criminal Revision No. 1516 of 1962.

Penal Code (XLV of 1860)—Ss. 441 and 448—Landlord breaking open the locks and taking possession of the premises in the absence of the tenant—Whether guilty of an offence under S. 448.

1963

May' 8th.

Held that there is nothing in section 441 of the Indian Penal Code which requires that the intimidation, insult or annoyance, which is caused to the person in possession of a property as a result of the entry upon that property, should be instantaneous and confined only to the moment of entry and not caused subsequent to the entry. All that this section requires is that the accused should make the entry with the intention to insult; intimate or annoy the person in possession and it is immaterial that the actual intimidation, insult or annoyance is caused not at the time of the entry but subsequently. To hold that criminal trespass implies an instantaneous intimidation, insult or annoyance upon the entry into possession of property; would be going not only against the plain language of the section but would also lead to state of lawlessness and highhanded activities. The mere temporary absence of the person in possession would not make any difference if the other ingredients of the offence of criminal trespass are established. A landlord who breaks open the locks and

takes possession of the premises in the absence of the tenant commits an offence under section 448 of the Indian Penal Code.

Petition under Section 439 of Criminal Procedure Code for revision of the order of Shri J. P. Gupta, Additional Sessions Judge, Hissar; dated the 17th July, 1962, modifying that of Shri Roshan Lal Sharma, Magistrate, II Class; Bhiwani, dated the 5th May, 1962, convicting the petitioner.

B. S. GUPTA and G. P. JAIN, ADVOCATES; for the Petitioner.

SURINDER SINGH, ADVOCATE; for the ADVOCATE-GENERAL; for the respondents.

JUDGMENT

Khanna, J.

KHANNA, J.—This revision petition, filed by Mata Din Singh, is directed against the order of the learned Additional Sessions Judge, Hissar, affirming on appeal the conviction of the petitioner under section 448, Indian Penal Code, but reducing his sentence from a fine of Rs. 200/- to that of Rs. 75/-, or in default three weeks' simple imprisonment. Bhanwar Singh, son of the petitioner, was also tried along with the petitioner but he was acquitted.

The prosecution case is that Tara Devi, wife of the petitioner, let out a house, situate in Bhiwani, to Krishan Chand (P.W.) on a monthly rent of Rs. 4/- about 8 or 9 years ago. Krishan Chand used to pay the rent of that house regularly to Tara Devi. On the morning of 12th January, 1961, it is stated, the petitioner along with his son, Bhanwar Singh, came to that house when Krishan Chand was away, broke open the lock and took its possession unlawfully. Report about this occurrence was lodged the same day by Krishan Chand.

The petitioner, at the trial, stated that the house in question had not been rented out to Krishan Chand. The trial Magistrate accepting the prosecution evidence against the petitioner, convicted him.

On appeal, the conviction of the petitioner was not challenged before the learned Additional Sessions Judge and the only prayer which was made was for reduction of sentence. The learned Additional Sessions Judge briefly discussed the evidence adduced by the prosecution and found it to be convincing. The defence version was held to be not worthy of credence. The conviction of the petitioner was, accordingly, upheld but the sentence was reduced from a fine of Rs. 200/- to that of Rs. 75/-.

Mata Din Singh
v.
The State

Khanna, J.

In revision, Mr. Gupta has argued that even if the facts, as found by the Courts below, were accepted to be correct, the petitioner is not guilty of the offence under section 448, Indian Penal Code. It is urged that at Krishan Chand (P. W.) was not present at the time the lock of the house in dispute was broken and possession taken by the petitioner, it cannot be said that the petitioner made his entry into the property in dispute with intent to intimidate, insult or annoy the person in possession of such property. Reference in this connection has been made to a Single Bench case *Bata Krishna Ghose and other v. The State*, reported in (1). I have given the matter my consideration and am unable to subscribe to the proposition enunciated by the learned counsel for the petitioner. Section 441 of the Code defines criminal trespass and reads as under:—

“441. Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or, having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such

(1) A.I.R. 1957 Cal. 385.

Mata Din Singh

v.

The State

Khanna, J.

person, or with intent to commit an offence, is said to commit "criminal trespass,"

Criminal trespass, as defined in the above section no doubt contemplates that the entry into or upon property in possession of another should be with intent to commit an offence or to intimidate, insult or annoy any person in possession of that property and it is obvious that a mere entry into or upon property in possession of another without the intention specified in the section would not make the act of entry to be criminal trespass unless the case is covered by the latter part of section 441 which deals with cases of persons who having lawfully entered into or upon any property, unlawfully remain there-with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence. There is nothing, however, in section 441 which requires that the intimidation, insult or annoyance, which is caused to the person in possession of a property as a result of the entry upon that property, should be instantaneous and confined only to the moment of entry and not caused subsequent to the entry. All that the section requires is that the accused should make the entry with the intention to insult, intimidate or annoy the person in possession and it is immaterial that the actual intimidation, insult or annoyance is caused not at the time of the entry but subsequently. To hold that criminal trespass implies an instantaneous intimidation, insult or annoyance upon the entry into possession of a property, would be going not only against the plain language of the section but would also lead to state of lawlessness and high-handed activities. In case the argument advanced on behalf of the petitioner were to be accepted, no person, who has made a clandestine entry into the house of another and whose presence is discovered subsequently, can be convicted for the offence of criminal trespass on the

ground that whatever be the annoyance, intimidation or insult caused by the entry it was not caused at the time the entry was actually made. It would also lead to the result that a person can with impunity enter into possession of a property whenever the person in possession of the same is away from that property.

Mata Din Singh
v.
The State
Khanna, J.

The above result would lead to an impossible situation and would have the effect of putting a premium on a high-handedness. Such a view is, however, not warranted by the language of the section and, after giving the matter my consideration, I am of the opinion that the mere temporary absence of the person in possession would not make any difference if the other ingredients of the offence of criminal trespass are established. I am fortified in this conclusion by the view taken in *Jodha Ram v. State*, reporter in (2), in which it was observed as under:—

“It was urged that it could not be assumed that the intention of the applicant was to ‘annoy’ the complainant when the entry was made into the house in the absence of the complainant. I cannot accept this contention. If this contention were accepted, this would give a free licence to landlords to take possession of tenants’ property in their absence even for a short while. When a landlord takes possession of a house in the absence of the tenant, the tenant is certainly annoyed when he comes to know that he was forcibly ousted from his house. The annoyance which is spoken of in S. 441, IPC, is not intended to be instantaneous. It may happen subsequently. There is no warrant for thinking that annoyance mentioned in the section must be caused “to the person in possession at the moment when another person enters into or upon the property. What has to be seen is the present intention of the accused. If the accused enters into possession of the property in the possession of another with

Mata Din Singh
 v.
 The State
 —————
 Khanna, J.

the intention to annoy that person, the offence is completed even though the annoyance is not actually caused to the person in possession at the moment of entry. When the accused knows that another person is lawfully in possession of property and illegally enters into possession of it, his intention cannot be anything else but that of annoyance to the person in possession."

Reference may also be made to *Jamuna Dass v. Emperor* reported in (3), the relevant head-note of which reads as under:—

"Accordingly where the accused breaks open the lock of the *kothri* of a house in the possession of the complainant and takes possession of the *kothri* in the absence of the complainant the accused must be presumed to have entered into possession with the intent at least to annoy the complainant and would be guilty of an offence under S. 448."

It has next been argued that the intention of the petitioner was not to insult, intimidate or annoy Krishan Chand but only to take possession of the property in dispute which belonged to the wife of the petitioner. In this respect, I find that it has been found by the Courts below that the property in dispute had been let out to Krishan Chand and he was in possession of the same as its lawful tenant. The petitioner or his wife could take possession of the property only through due process of law by obtaining an ejectment order and executing the same and not by breaking open the lock of the property. It must have been obvious to the petitioner that his act in breaking open the lock of the property in possession of Krishan Chand must cause annoyance to him,

and as a man is presumed to intend the natural consequences of his act it follows that the petitioner must have intended to cause annoyance to Krishan Chand. Regarding the argument that the intention of the petitioner was only to take possession of the property in dispute and not to cause annoyance, I am of the opinion that the distinction must be kept in view between the intention and objective, or, as observed by Stephen, between intention and motive. Although it may be correct that the object of the petitioner was to take possession of the house in question, his act shows that his intention was to cause annoyance to Krishan Chand. In this context, it would be useful to reproduce the observations of Stephen in Stephen's History of the Criminal law, Volume II, pp. 111 and 112, which are to the following effect:—

Mata Din Singh

v.

The State

Khanna, J.

“The maxim (viz. that a man must be held to intend the natural consequences of his act), however, is valuable as conveying a warning against two common fallacies, namely, the confusion between motive and intention and the tendency to deny an immediate intention because of the existence, real or supposed, of some ulterior intention. For instance, it will often be argued that a prisoner ought to be acquitted of wounding a policeman with intent to do him grievous bodily harm, because his intention was not to hurt the policeman, but only to escape from his pursuit. This particular argument was so common that to inflict grievous bodily harm with intent to resist lawful apprehension is now a specific statutory offence; but, if the difference between motive and intention were properly understood, it would be seen that when a man stabs a police constable in order to

Mata Din Singh

v.

The State

Khanna, J.

escape, the wish to resist lawful apprehension is the motive, and stabbing the policeman the intention, and nothing can be more illogical than to argue that a man did not entertain a given intention because he had a motive for entertaining it. The supposition that the presence of an ulterior intention takes away the primary immediate intention is a fallacy of the same sort."

It was further observed:

"When, therefore, a man enters upon land in the possession of another, having reason to believe that, in all likelihood, such entry would, under the circumstances, cause annoyance to the latter, the entry is not merely an intention trespass, but may further be held, unless there be circumstances to rebut the presumption, to be in point of fact, a trespass with the specific intent to annoy the possessor. The final intent (i.e. the motive) may be to assert a right; but its presence cannot wipe out the immediate intention. We should rather hold, in the circumstances above mentioned, that the trespasser entered upon the land in the possession of another, with intent to annoy the person in possession, being moved thereto by his desire to assert his title. In other words, we should be disposed to say that the trespasser committed criminal trespass in order to assert his right."

Mr. Gupta has referred to a case *Marotrao Ganpatrao Jandhav v. The State and another*, reported in (4). The

(4) A.I.R. 1960 Bom. 481.

facts of the case are, however, distinguishable because there was a dispute in that case as to whether the person claiming to be in possession of the land was a tenant or not and the trial Magistrate found that there was no lease of the land in favour of the person claiming to be the tenant but only a right to take away grass.

Mata Din Singh
The State
Khanna, J.

For the reasons, stated above, the revision petition fails and is dismissed.

B. R. T.

APPELLATE CIVIL

Before P. D. Sharma, J.

SUNDER,—Appellant.

versus

SURJAN SINGH,—Respondent.

Regular Second Appeal No. 1213 of 1961.

Code by Civil Procedure (Act V of 1908)—S. 144—
Powers under—Whether can be exercised by Revenue
Officers; under the Punjab Tenancy Act (XVI of 1887). 1963
May, 9th.

Held that the right of a party to obtain restitution is intimately connected with the question of execution and as laid down in rule 10 framed under section 85 of the Punjab Tenancy Act, the proceedings before the Revenue Officer would be governed by the Code of Civil Procedure and he would have ample power to make an order for restoring possession to the tenant who has been ejected in execution of an order which has been set aside on appeal.

Regular Second Appeal from the decree of the Court of Shri Om Parkash Sharma, Senior Sub-Judge, with enhanced appellate powers, Karnal, dated the 13th day of May, 1961, reversing that of Shri Shamsher Singh Kanwar, Extra Sub-Judge, III Class, Karnal, dated the 17th January, 1961 and granting the plaintiff a decree for injunction restraining the defendant from interfering with the possession of the plaintiff, now appellant, over the land in suit, except in due course of law under a valid order