

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1104 OF 2011

Mahesh Dube

...Appellant(s)

Versus

Shivbodh and Ors.

...Respondent(s)

J U D G M E N T

Deepak Gupta, J.

1. Shankar Prasad Dube, father of the respondents was a tenant of Prayag Prasad Dube, father of the appellant. A suit for eviction on account of non-payment of rent was filed by Prayag Prasad Dube against Shankar Prasad. The suit was decreed. In execution of the decree, possession of the house was delivered to Prayag Prasad Dube on 26.11.1985, and he, put his own lock on the house. On the night intervening on 26.11.1985 and 27.11.1985, the respondents herein along with their father Shankar Prasad Dube and grandmother trespassed into the

house of Prayag Prasad Dube and forcibly took possession of the house. Thereafter, Prayag Prasad Dube lodged a report against the respondents and their father and grandmother Gomti Devi. Charges were framed against the accused. Gomti Devi died during the pendency of the trial and the respondents along with their father Shankar Prasad Dube were convicted by the Trial Court under Section 448 of I.P.C. The Trial Court while convicting the respondents and their father also directed that the case property be handed over to the complainant.

2. Thereafter, the respondents and their father filed an appeal before the Sessions Judge which was dismissed on 18.11.1997. After dismissal of the appeal, the father of the present appellant filed an application under Section 456 Cr.P.C. for handing over the possession of the property to him. The Trial Court rejected the application only on the ground that it had been filed beyond the period of 30 days from the date of order of the Appellate Court. A Revision Petition was filed, which was dismissed. A petition under Section 482 Cr.P.C. was filed before the High Court and the same was also dismissed on 19.09.2008. Hence, this appeal.

3. Section 456 of the Cr.P.C. reads as follows:

“456. Power to restore possession of immovable property. -

(1) When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property:

Provided that no such order shall be made by the Court more than one month after the date of the conviction.

(2) Where the Court trying the offence has not made an order under sub-section (1), the Court of appeal, confirmation or revision may, if it thinks fit, make such order while disposing of the appeal, reference or revision, as the case may be.

(3) Where an order has been made under sub-section (1), the provisions of section 454 shall apply in relation thereto as they apply in relation to an order under section 453.

(4) No order made under this section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.”

A bare reading of the Sub-Section 1 of Section 456 clearly indicates that the Trial Court can pass an order for restoration of the possession of the property to the person who was forcibly dispossessed. The proviso no doubt lays down that no such order shall be passed after one month of the date of conviction.

4. In this case, the Trial Court while convicting the accused had passed an order directing restoration of the property to the complainant Shankar Prasad Dube. In the order, it has been stated that the property in the case be handed over to the petitioner Prayag Prasad Dube. Keeping in view of the nature of the dispute, there is no other case property except the property whose possession was forcibly taken by the respondents and their father. Therefore, no separate order was required directing restoration of possession since such an order had been passed while convicting the respondents and their father.

5. It seems that after the appeal was filed, the order directing restoration of the possession was not given effect to. We may also make reference to Sub-Section 2 of Section 456 Cr.P.C. which provides that if the Court trying the offence has not made such an order, the Court of appeal, confirmation or revision can also make such an order while disposing of the proceedings pending before it. No limitation has been provided for the higher courts to make such order. In this behalf, reference may be made to the

judgment of this Court in ***H. P. Gupta v. Manohar Lal AIR 1979 S.C. 443.***

6. In the present case, after the appeal filed by the respondents and their father was dismissed, the father of the present appellant applied for handing over possession to him in terms of the order already passed by the Trial Court while convicting the respondents and their father, in which eventually, the limitation of 30 days would not apply. It would apply only if the Trial Court had not passed any order in respect of the case property while convicting the accused.

7. In view of the above discussion, the present appeal is allowed. The order of the High Court in Miscellaneous Criminal Case No.7799 of 1998 dated 19.09.2008, the order of the Sessions Court in Criminal Revision No.234 of 1998 dated 02.09.1998, the order of the Trial Court in M. J. C. No.1 of 1998 dated 01.05.1998 are set aside and the respondents are directed to handover the possession of the property, which is the subject matter of the case and from which the appellant and his father were forcibly dispossessed, to the appellant within one month of

the service by a certified copy of this order upon the respondents.
The appeal is allowed accordingly in the aforesaid terms. Pending application(s), if any, stand(s) disposed of.

.....**J.**
(Sanjay Kishan Kaul)

.....**J.**
(Deepak Gupta)

New Delhi
February 12, 2019