

PREMARATNE PERERA

v.

ALWIS AND ANOTHER

COURT OF APPEAL
PALAKIDNAR, J.
C.A. APPLICATION 1281/86.
M.C. PANADURA 24351.
DECEMBER 14, 1987.

Criminal law—Criminal House, Trespass under s. 434 Penal Code—Ejection after conviction under s. 430(1) of the Code of Criminal Procedure Act.

The accused was convicted of criminal house trespass under s. 434 of the Penal Code. The virtual complainant (petitioner) sought to have accused ejected from the premises under s. 430(1) of the Code of Criminal Procedure Act on the basis that force had been used in the commission of the offence.

Held—

The Magistrate should make order for the ejection of the accused from the premises under s. 430(1) of the Code of Criminal Procedure Act. The petitioner has a legal right to have possession delivered to him.

APPLICATION for revision of the Order of the Magistrate of Panadura.

N. R. M. Daluwatte P.C. with *Miss. M. Nandadasa* for petitioner, *M. D. K. Kulatunge* with *Miss M. Weerasooriya* for accused-respondent.

January 11, 1988.

PALAKIDNAR, J.

Wimaladasa the accused-respondent was charged in the Magistrate's Court of Panadura on the counts of intimidation punishable under Section 486 of the Penal Code and criminal trespass punishable under Section 434 of the Penal Code. He was acquitted on the count under Section 486 but found guilty on the charge of trespass.

The conviction of the accused was confirmed in appeal by this court but the sentence was varied and remitted back to the Magistrate's Court of Panadura to deal with the accused with the variation of sentence. The petitioner sought to have the accused ejected from the premises on the basis of the conviction wherein the Magistrate acting under Section 430(1) of the Code of Criminal Procedure held that possession of the premises should go to the complainant. He has found on the evidence that force was used in the commission of the offence. Accordingly in compliance with Section 430(1) of the Code of Criminal Procedure the trial Judge had gone further and even explained the provisions of Section 430(2) of the Code of Criminal Procedure Act in his order dated 3.9.82.

When the record was sent back from the Court of Appeal, the Magistrate who was the incumbent of the office on 18.7.1986 took the view that he could do no further than communicate the variation of the sentence and displayed a curious judicial paralysis in refusing to make an order of ejection in terms of the verdict of 3.9.82. The verdict unambiguously states that under Section 430(1) the possession "should go to the complainant". It is a legal right embodied in the law and granted by Court.

Counsel for the accused urged before this Court that the element of force was not proved at the trial. It is a finding of fact by the Magistrate on the evidence and confirmed by this Court in the appeal. Exercising revisionary powers, this court cannot disturb such a finding of the Court of Appeal.

I therefore direct that the Magistrate make order for ejection of the accused respondent from the premises in question forthwith and restore possession to the complainant petitioner to this application under Section 430(1) of the Code of Criminal Procedure Act.

The accused-respondent should pay the costs of this application to the complainant petitioner. I would set aside the order of the Magistrate of 18.7.1986 produced P3D in this application and further direct that he make order for ejection as directed herein and also communicate the variation of sentence of the Court of Appeal by judgment dated 26.2.85.
