

1965 Present : Alles, J.

H. KAENELIS SINGHO, Appellant, and M. A. JAYATILLAKE (S. I. Police),
Respondent

S. C. 803/1965-M. C. Colombo, 43516/G

Criminal Procedure Code-Section 418-" Criminal force "-Criminal trespass- Power of Court to restore possession of immovable property.

Section 418 (1) of the Criminal Procedure Code reads as follows :-

" Whenever a person is convicted of an offence attended by criminal force and it appears to the Court that by such force any person has been dispossessed of any immovable property, the Court may if it thinks fit order such person to be restored to the possession of the same."

Held, that threats made to the dispossessed person's servants or his agents which cause them to leave the premises in question and seek refuge under the law may constitute " criminal force " within the meaning of the Section. It is not necessary that the show of criminal force should be to the dispossessed person himself personally.

APPEAL from a judgment of the Magistrate's Court, Colombo. Prins Rajasooriya, for the accused-appellant. Cecil Goonewardene, Crown Counsel, for the Attorney-General.

November 10, 1965. **ALLES, J.-**

The accused in this case has appealed from an order of the Magistrate under section 418 of the Criminal Procedure Code directing the restoration of possession of a land called Alubogahalanda and the house standing thereon to the complainant Charles Silva ; it was alleged that he was dispossessed of this property by the accused. The facts as accepted by the Magistrate and unchallenged by Counsel for the accused-appellant are to the following effect:-Charles Silva's wife, Ceciliyana Perera, instituted an action in the District Court of Colombo for a declaration of title to the land and house in question. The accused was a defendant in the case and after trial, Ceciliyana Perera obtained judgment. Writ was taken out on 1.7.63 and the Fiscal's officer proceeded to the land and delivered possession of the house and land to Charles Silva on behalf of his wife; the belongings of the accused and his family were thrown out by the Fiscal and they were ejected from the premises. Charles Silva took possession of the premises at about 4 or 4.30 p.m. and immediately afterwards placed P. V. Karunaratne and two others in possession and went away asking them to look after the property. That same evening, the accused and several others came back to the land-one of them armed with a knife-and threatened to

kill Karunaratne and the others who were in occupation. The accused and his party ordered Karunaratne and the others to leave the land and Karunaratne then left and made a complaint to the Police. Thus it will be seen that within a few hours of being ejected by the Fiscal by due process of law, the accused and his family forcibly re-occupied the house. Subsequently, the

accused appealed against the judgment of the District Court and his appeal has been dismissed. The judgment of the District Court declaring Charles Silva's wife to be entitled to the land and premises in question has thus been affirmed by the Supreme Court. On Karunaratne's complaint against the accused on 1.7.63, the Police charged the accused with criminal trespass in the present case, and on 24.12.63, the accused pleaded guilty to the charge and asked for three months time to leave the land. This application was granted. He was given a further extension up to 13.7.64, and on that day he was sentenced to three months rigorous imprisonment for not fulfilling his undertaking to leave the land. On the same day, the complainant moved for an order for the restoration of possession of his property under section 418 and the case was put off for further evidence for 20.7.64. On the same day that he pleaded guilty to the charge of criminal trespass, the accused appealed against his conviction and sentence and in view of his appeal, the application under section 418 was not proceeded with, pending the decision of the Supreme Court. On 10.12.64, the Supreme Court rejected the accused's appeal and the accused was duly committed to jail for three months on 27.2.65. While he was serving his term in jail, his family continued to be in occupation of the land and after his release from jail, the accused too returned and occupied the house. The evidence clearly demonstrates that the accused, by adopting all kinds of dilatory tactics has set at nought and rendered futile the decrees of the Supreme Court and the District Court of Colombo. I therefore entirely agree with the Magistrate that this was an appropriate case under which an order under section 418 should be made.

Counsel for the accused-appellant however submits that an order under section 418 is not warranted in this case because there was no show of criminal force employed to the person of the complainant and he cites in support the judgment of Jayewardene, A.J. in *Sheriff v. Pitche Umma* [1 (1924) 26 N. L. R. 353.] and the judgment of Maartensz, J. in *Henry de Silva v. Seneviratne* [2 (7925) 3 Times L. R. 126.]. In the former case at p. 459, Jayewardene, A.J. stated that-

" Where an accused is convicted of criminal trespass, unless such trespass was attended by criminal force or the complainant was dispossessed by such force, an order under section 418 cannot be made."

The learned Judge then draws attention to a case where no force or violence was used to an individual, but the complainant was dispossessed by having the padlock on a gate broken. The case of *Sheriff v. Pitche*

216

Umma was considered by Dalton, J. in the unreported case of *Mudiyanse v. De Alwis* and by Nihill, J. in *John v. Richard Peiris* [1 (1939) 15 C. L. W. 156.]. In both cases the facts in *Sheriff v. Pitche Umma* were distinguished; in the former case, Dalton, J. emphasised that threats of violence and murder which cause people to go away from land could rightly be said to amount to a show of criminal force. In *John v. Richard Peiris*, the threats were made to the servants of the complainant which caused them to leave their work and run away and in consequence of which the accused entered into possession of the land. This same view has been followed by T. S. Fernando, J. in *Abraham Singho v. Elias* [(1956) 60 N. L. R. 332.].

It is therefore unnecessary that the show of criminal force should be to the complainant himself; nor do the cases relied on by Counsel for the appellant support this proposition. It is sufficient if threats were made to the complainant's servants or his agents which caused them to leave the premises and seek refuge under the law. This is what has happened in the present case, and in the circumstances, the Magistrate was amply justified in making an order under section 418 of the Criminal Procedure Code.

The appeal is therefore dismissed.

Appeal dismissed.

- End -