Atar Khan Vs. the State

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SooperKanoon Citation : sooperkanoon.com/133888

Court : Guwahati

Decided On : May-27-1959

Judge : C.P. Sinha, C.J.

Appellant : Atar Khan

Respondent : The State

Judgement :

C.P. Sinha, C.J.

1. This is an application in revision against the appellate order of the Additional Sessions Judge, Upper Assam Districts confirming the conviction of the petitioner Under Section 188, I. P. Code, and modifying the sentence imposed on him.

2. The short facts are as follows. On 26-12-55, a petition was filed by one Rani Begum before the Additional District Magistrate, Dibrugarh, alleging her dispossession from certain lands at the instance of the petitioner and mentioning therein that there was an apprehension of a Breach of the peace between the parties. The learned Magistrate, upon the petition itself, made an. order to the effect that the Moran Police should attach the disputed lands and submit a report Under Section 145, Cr.PCod,?. On 28-12-55. it is said that the Police attached the lands in dispute, and on 3-1-56, a petition was filed by said Rani Begum before the Additional District Magistrate alleging that the petitioner, in spite of the attachment of the disputed lands had entered into the said lands forcibly grid completed

construction of the house standing thete-on, and thereby violated the order of attachmen Upon this petition, the learned Additional District Magistrate made a complaint in writing on 30-1A 56 Under Section 188, I. P. Code. Thereafter the petitioner was tried and convicted Under Section 188 of the 'lode and sentenced to rigorous imprisonment for one month and also to pay a fine of Rs. 50/-. in default, further rigorous imprisonment for one month. Against this order of conviction,, there was an appeal and, on appeal, the conviction has been upheld, but the learned Additional Sessions Judge has altered the nature of the imprisonment, namely, from rigorous to simple imprisonment, and the Imprisonment in default of payment of lion, has also been similarly altered. With these modifications in the sentence, the appeal was dismissed. Hence this application In revision.

3. Mr. Gaswami the learned Counsel appearing on behalf of the petitioner submits:

(i) that there was no lawful order of attachment and, therefore, there was no question of any Eolation of any order;

(ii) that even at the time of the so-called attachment, there was no order upon the petitioner prohibiting him to go over to the land in dispute; and

(iii) that even if the submissions mentioned above be not tenable, no offence was committed Under Section 188, I. P. Code.

4. Section 145, Cr.PCode, Sub-clause (1) specifically mentions that if the Magistrate is satisfied that a dispute likely to cause a breach of the peace exists 'he shall make an order in writing, stating the grounds of his being so satisfied...”

Sub-clause (4) of Section 145, the third proviso, runs as follows:

Provided also that, if the Magistrate considers the case one of emergency, he may at any time attach the subject of dispute, pending his decision under this Section.

5. From the facts which I have already given, on 26-12-55 or even on 28-12-55, the alleged data of attachment, there was no order Under Section 145, Cr.PCode, by the Magistrate. The proceeding was started Under Section 145 of the Code on 2-3-56 a long time thereafter. The question is whether there was any proceeding

Under Section 145, Cr.PCode, in existence on 26-12-55, when the learned Magistrate passed orders upon the Police to attach the land in dispute. In my opinion, the answer must be in the negative. It is true that the Magistrate could be satisfied about the existence of an apprehension of a breach of the peace either upon a Police report or upon any other information, to enable him to start a proceeding under that Section. But the question is - whether he did, in fact, start a proceeding under Section 145 of the Code on 26-12-55. I have already said that no such proceeding was started on 26-12-55.

6. The next question that arises is whether the learned Magistrate was entitled, Under Section 145, Cr.PCode, or under any other provision of law, to rajas orders for attachment of the land in dispute. Apart from the provisions of Section 145, Cr.PCode, my attention has not been drawn to any other provision of law which could enable the Magistrate to order attachment of the land in dispute. It is submitted on behalf of the State that it was a case of emergency and, therefore, the Magistrate acted well within his jurisdiction to order attachment of the land in dispute pending submission of a report by the Police, as asked for by the Magistrate on that very day, namely, 26-12-55. I am unable to agree. In cases of emergency. Magistrates are not left without remedv under law to deal with such emergency. If the teamed Magistrate thought it Was a case of emergency and that he was not in a position to make tire his mind until he had received a Police report to enable him to take action under _S. 145 of the Code he could have in the meantime started a proceeding Under Section 144, Cr.PCode, and stopped the apprehension, if any, of a breach of the peace. After he had received the Police report, as asked for. he could have, if satisfied about the desirability of starting a proceeding Under Section 145 of the Code, very well converted the Section 144 proceeding into one Under Section 145, Cr.PCode. In my judgment, therefore, the order of attachment on 26-12-55, without starting a proceeding under Section 145, Cr.PCode, was absolutely without jurisdiction. Me attention has been drawn by the learned Counsel on behalf of the State to a case decided by this Court and reported as Durga Prasad Goenka v. Rameswar Goenka A.I.R. 1959 Assam 54. That case-on facts has no resemblance to the case in hand, this Court, on the facts of that case, came to the conclusion that the Magistrate was satisfied that there was existence of an apprehension of a breach of the peace and, therefore, a

proceeding Under Section 145, Cr.PCode, without expressly mentioning the fact that the Magistrate was satisfied about the existence of an apprehension of a breach of the peace was sufficient compliance with the provisions of law. Here, we are concerned with the liberty of the subject who has been proceeded against under the Penal Code for contravention of certain orders. It is necessary, therefore, to establish first that there were lawful orders which he has disobeyed. If there were no lawful orders, no question of proceeding Under Section 188, I. P. Code, arose in this case.

So far as the order of attachment by the Police is concerned, it is not on record, but the learned Counsel on behalf of the petitioner has draw the attention of the Court to the order of attachment in his own file. According to him, the Police merely said that the disputed land was attached. This content of the order of attachment is not disputed by the other side. The word 'attachment' has not been defined anywhere in the Penal Code or in the Code of Criminal Procedure. From the provisions of Section 88 of the Code of Criminal Procedure, we caught some idea about the import or the word 'attachment'. I should like now to read the relevant portion of Section 88 of the Code. Sub-clause (1):-

The Court issuing a proclamation Under Section 87 may at any time order the attachment of any property, moveabla or immoveable, or both. belonging to the proclaimed person.

Sub-clause (4) :-

If the property ordered to be attached is immoveable, the attachment under this Section shall in the case of land paying revenue to the State Government be made through the Collector of the district in which the land is situate, and in all other cases -

(e) by taking possession; or

(f) by the appointment of a receiver; or

(g) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(h) by all or any two of such methods, as the Court thinks fit.

In the present case, the property is imrnoveable property and, therefore, I have only mentioned Sub-clause (4) of the Section. I have not referred to this Section to show that the provisions contained therein applied to the present case. I have merely quoted the Section to show the way in which attachment of immoveable property Under Section 88 of the Code of Criminal Procedure could be made. The order of attachment in this case does not per se show that the petitioner was prohibited from going over to the land in dispute. In the view which I have taken of the first submission of the learned Counsel on behalf of the petitioner. the question as to whether the attachment was made properly or not properly, does not strictly arise for consideration. I have dealt with this Dart of the argument merely to emphasise that merely saying by the proper authority that a certain property is attached, is not enough. There must be orders prohibiting entry upon the land or prohibiting the person or persons concerned from going over and making any alteration in the situation of the land.

7. Now, coming to the last submission as regards the applicability of Section 188, I. P. Code, it has to be held that the proper ingredients of the offence mentioned in Section 188. I. P. Code, have not been found in this case, as there were no materials on those points. The relevant portion of Section 188, I. P. Code, reads as follows:

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed 'to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, 'if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury,' to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both: ...

Explanation. - It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm, 'It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is

likely to produce, harm'.

8. I have underlined (here into ' ') the words which, in my opinion, are important. Even if it be taken that there was a legal proceeding Under Section 145 Cr.PCode, in existence on 26-12-55, the difficulty that arises is that there was no direction upon the petitioner 'to abstain from _ a certain act or to take certain order with certain property in his possession or under his management', and that he disobeyed such direction. The order was upon the Police merely to attach the land in dispute. There was no direction upon the petitioner of any kind. In the next place, even if there were directions upon the petitioner which he disobeyed, mere disobedience is not enough. The disobedience should be such as 'causes or tends to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury. There is no finding - perhaps because there is n(> material for such a finding - in regard to causing or tending to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury,

9. Lastly, there is no finding that the petitioner knew of the order which he disobeyed and that his disobedience produced or was likely to produce any harm.

10. In my judgment, on the considerations made above, it must be held that the conviction of the petitioner Under Section 188 of the I. P. Code was unwarranted and the petitioner, therefore, must be acquitted of all charges Under Section 188 of the Code. The Rule is accordingly made absolute.