

**Katappa and ors. Vs. Serappa Sakalathi Rangappa and anr.**

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**Court :** Karnataka

**Decided On :** Aug-22-1955

**Reported in :** AIR1955Kant131; AIR1955Mys131; 1955CriLJ1509

**Judge :** Gowda, J.

**Acts :** [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 539B and 556; [Indian Penal Code \(IPC\), 1860](#) - Sections 427 and 447

**Appeal No. :** Criminal Revn. Petn. No. 36 of 1955

**Appellant :** Katappa and ors.

**Respondent :** Serappa Sakalathi Rangappa and anr.

**Advocate for Pet/Ap. :** B.T. Parthasarathy, Adv.

**Judgement :**

ORDER

1. This revision petition is directed against the judgment of the First Class Magistrate, Chitaldrug in C. C. No. 710/54 on his file convicting the petitioners for offences punishable under Sections 427 and 447, Penal Code and sentencing each of them to pay a fine of Rs. 5/- on each of the counts and in default of payment of fine to suffer S. J. for 15 days.

2. The respondents filed a private complaint against the present petitioners on 19-5-1954 alleging that they had unauthorisedly trespassed into the two sites that they had purchased from Mananji Rangappa and had removed the fencing that had been put up and had further constructed five sheds and as such were liable to answer charges for offences under Sections 427 and 447, Penal Code. The learned Magistrate, who recorded the sworn statements of the respondents, registered a case against the petitioners for offences under Sections 427 and 447, Penal Code. After recording the evidence of the petitioners and three other witnesses examined on their behalf, the learned Magistrate framed two separate charges for the said offences against all the petitioners. The petitioners pleaded not guilty to the charges that were read over and explained to them.

After framing the charges and before permitting further cross examination of the prosecution witnesses, the learned Magistrate inspected the premises on 11-12-1954. The petitioners did not examine any defence witnesses on their behalf. The learned Magistrate ultimately held that the present petitioners had trespassed into the sites in dispute and had unauthorisedly constructed live sheds in which they were living and thus were guilty of the two charges levelled against them and convicted and sentenced them as above said. It is against this decision that the present petition has been filed by the petitioners.

3. It was contended by the learned Advocate for the petitioners that the learned Magistrate was not justified in assuming the jurisdiction of a civil Court and proceeding to decide a dispute relating to the ownership and possession of the sites in question. He further contended that the learned Magistrate had no material on record to hold that the petitioners had removed any fencing put up by the respondents and had thereby committed mischief causing damage to the extent of more than Rs. 100 to the sites of P. Ws. 1 and 2 so as to make them liable for an offence under Section 427, Indian Penal Code.

It was also urged that the learned Magistrate was not justified in inspecting the premises in dispute suo motu and forming an opinion about the age of the sheds put up on the sites and relying upon the same to come to the conclusion that the petitioners must have constructed those sheds within 12 months prior to the date

of the inspection, when the respondents had not adduced any evidence worth the name to substantiate their contention that the sheds were put up by the petitioners on or subsequent to 19-4-54. There is considerable force in all these objections raised by the learned counsel for the petitioners. The respondents who were examined as P. Ws. 1 and 2 have not said a word about the value of the fencing that was alleged to have been removed by the petitioners.

There was absolutely no data for the learned Magistrate to hold that the cost of the fencing was more than Rs. 100 and that the petitioners committed mischief in removing or damaging the said fencing and as such were liable for an offence under Section 427, Indian Penal Code. Similarly there was absolutely no evidence 'adduced by the respondents to prove that Rangappa, the previous owner, had delivered possession of the two sites in dispute to them and that they were in possession of them on 19-4-1954, on which date the petitioners were alleged to have trespassed into them. For reasons best known to them, the respondents did not care to examine Rangappa to prove that he had delivered possession of the sites to them.

The evidence of P. Ws. 3 and 4 does not throw any light about the actual possession of the sites by the respondents and the alleged trespass committed by the petitioners on 19-4-54. It is obviously to overcome this lacuna in the evidence and to ascertain as to whether there was any truth in the assertion of the petitioners that they were in actual possession of the sites for a pretty long time and that they had put up the sheds long prior to the date of the alleged incident, that the learned Magistrate thought fit to inspect the premises. The evidence adduced by the respondents clearly indicated that the matter in dispute between the petitioners and the respondents about the possession of the sites in question was entirely of a civil nature and that respondents 1 and 2 had taken recourse to the criminal Court as a short cut to get possession of the sites instead of agitating the matter in a proper civil Court and obtaining possession from the petitioners.

The learned Magistrate, in my opinion, was not justified in acting on the interested, unreliable and hopelessly discrepant evidence of the respondents' witnesses and holding that the petitioners actually trespassed into the sites on 19-4-1954 and

constructed the sheds on or subsequent to that date. The only important data that was available for the learned Magistrate to hold that the petitioners must have trespassed into the sites subsequent to or somewhere near about 19-4-54 was the observation that he made from the local inspection. The learned Magistrate has entirely acted upon his observations and as a matter of fact incorporated his observations and opinion in his judgment and entirely relied upon to hold that the sheds put up by the petitioners, were of recent origin and as such there was no force in the contention of the petitioners that they were living in those sheds from a long time prior to the date of the alleged incident. The learned Magistrate, in my opinion, was not justified in incorporating his opinion based on the observations he made at the time of the local inspection and relying upon those observations to hold that the petitioners must have trespassed into the sites recently or at any rate just subsequent to 19-4-1954. A Magistrate is no doubt entitled to inspect any premises after the entire evidence in the case is adduced to clear any doubt that is created in his mind about the situation of the premises or for purposes of appreciating the evidence but has no right to entirely create evidence and to introduce it into the case for the purpose of finding persons accused of the offence guilty.

4. In--'Haldhar Thakur v. Emperor', A I R 1929 Pat 160 (A), it was held that where a Magistrate went to make local inspection in order to be able to appreciate evidence, but, in fact, created evidence and introduced it into the case for the purpose of his decision, he went beyond his jurisdiction in making the local inspection. His Lordship Wort, J. in the said decision dealing with the jurisdiction of the Magistrate to inspect the disputed place has observed as follows :

'The main question which is argued before this Court in revision is that the learned trial Magistrate went to the spot for the purpose of inspecting and for the purpose of appreciating the evidence but in the result he went beyond his jurisdiction inasmuch as he introduced his own evidence, if it may be so described, into the case. It is quite clear from the judgment as well as from the report of the local inspection that, he measured up the plots and came to a certain and definite conclusion as to whether the bamboos, the subject-matter of the dispute, were on plot 254 as it is alleged by the prosecution at on plot 1199 as alleged by the

defence. I have carefully considered this judgment and am forced to the conclusion which I regret that the learned Magistrate did go beyond his jurisdiction in making this local inspection. It is almost impossible for this Court to lay down the line of demarcation between the exercise of his jurisdiction under Section 556 of the Code and what appears to have taken place in this case.... It seems to me to be abundantly clear that on what actually took place, there is no doubt that the learned trial Magistrate quite bona fide did create evidence and introduce it into the case for the purpose of his decision.'

In -- 'Abdul Hamid v. Hasan Raza', A I R 1923 Pat 366 (B), dealing with a similar question relating to the use of the materials gathered at the spot inspection by a Magistrate, it was observed as follows:

'The third objection taken by the learned Vakil for the petitioner is that in deciding the case the learned Magistrate has relied upon the result of his own local inspection and not upon the evidence on the record. This objection appears to be of substance and ought to be allowed. On a reference to the judgment of the learned Deputy Magistrate it is quite evident that his finding is based upon the results of his own local inspection. It is salutary principle of law that the finding of a Court must be based upon evidence duly recorded by it and not upon the impression formed by the Judge on a local inspection of the locality. He can in order to elucidate the evidence make a local inspection and the object of a local enquiry would be only with a view to understand the evidence actually adduced in the case.'

To the same effect are the observations in a decision reported in -- 'Dwarika Prasad v. Ram Nath Modi' AIR 1951 Vind P 1 (C). His Lordship Krishnan J. C. has observed at para. 10 of his judgment as follows :

'There is one more point also. The learned Magistrate has held a local inspection under Section 539B. This section is so widely framed as to justify a local inspection at any stage, before framing charge or as for that matter even before recording the evidence. The only purpose of local inspection being to properly appreciate the evidence given at the trial it is only reasonable that the local inspection should as a rule come after all the evidence is recorded. The obscurity,

if any, in the earlier stages of the hearing may clear as more evidence is recorded, so the Court should not be hasty unless there are some very exceptional grounds. As more evidence is recorded there may be fresh aspects of the problem, which a local inspection may help in proper appreciation. Obviously, it is neither proper nor practicable for the Court to be holding repeated local inspections at every stage of the case. Thus unless in the exceptional circumstances, no local inspection should be made till after all the evidence is recorded .... Even that should be resorted to very sparingly, the Court taking special precautions to prevent itself becoming a witness unconsciously. On some occasions it is practically impossible for the Court to make a local inspection and not import new materials collected by it. The moment the Court collects new material it becomes a witness and as it cannot cross-examine itself it cannot try the case.'

Reference also may be made to a decision reported in *Kunia Lal v. The King*, 54 Cal. W N. 186 (D) wherein His Lordship Harries C. J. dealing with the rights of a Magistrate to view a locality to enable him to appreciate the evidence has observed thus :

'The learned Magistrate viewed the property in question some seven months after this occurrence. A Judge or a Magistrate may view a locality to enable him to appreciate the evidence. But he can decide nothing as a result of what he himself sees. In short what he himself sees is not evidence in the case and for a very good reason the Judge or Magistrate cannot be cross-examined. The Judge or Magistrate, however, can visit a place in order to appreciate the evidence which has been given. The learned Magistrate in this case noticed certain features, the sprouting of trees and the existence of some platform from which he made certain deductions. He is not entitled to make any deductions whatsoever from what he himself sees and which were not referred to by any other witness.'

It is thus clear from the above review of the several decisions cited above that the learned Magistrate was not justified in incorporating his observations and relying upon them to hold that the sheds put up by the petitioners were of a recent origin and as such there was no truth in their version that they were in occupation of these sheds long prior to the date of the alleged incident. The convictions of the

petitioners based mainly on these observations of the Magistrate, cannot, therefore, be supported and are liable to be set aside.

5. In the result, therefore, this revision petition is allowed. The convictions and sentences passed against the petitioners are set aside. The fine amounts, if any paid by the petitioners, will be refunded to them.

6. Revision allowed.

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