

Empress of India Vs. Budh Singh

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Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1880)ILR2All101

Judge : Turner, J.

Appellant : Empress of India

Respondent : Budh Singh

Judgement :

Turner, J.

1. It is found that the petitioner, in order to appropriate the wall of his neighbour, the complainant, to which he knew he had no right whatever, caused workmen to cut niches in the wall, to lay rafters on the wall, and to put water-spouts in the wall; and that he also caused workmen to remove bricks belonging to the complainant from the yard of the complainant and to place them on the wall, in order to form a parapet for buildings he was erecting on the other side of the wall; and that he threatened the complainant with violence when he attempted to interfere to protect his property. The Magistrate on these findings convicted the petitioner of criminal trespass and of mischief, and sentenced him in respect of each offence to pay a fine of Rs. 100, and in default to undergo simple imprisonment for fifteen days. In appeal the Sessions Judge affirmed the convictions and sentences.

2. Revision of the orders of the Courts below is now sought on the following grounds:--It is argued that the offence of criminal trespass has not been established because the petitioner did not enter on the premises of the complainant with the intent of insulting, intimidating, or annoying the complainant, nor with the intent to commit an offence, but with the intent of benefiting himself. It is also argued that the offence of mischief is not established because the petitioner did not cause the destruction of any property nor any change in such property, or in the situation thereof, as destroyed or diminished its value or utility, and that, if he did so, he did not do so with the intent of causing wrongful loss or damage to the complainant but of benefiting himself. It is argued in respect of both charges that the complainant should have been referred to the Civil Court, and that the Criminal Court should not have entertained them; and lastly it is contended that, inasmuch as it has been found it was the object of the criminal trespass to commit the offence of mischief, the petitioner could not legally receive a double punishment.

3. The objection that the Criminal Courts ought to have declined jurisdiction because the petitioner set up a claim to the wall and to the bricks cannot be sustained on the findings of the Magistrate.

4. If a person enters on land in the possession of another in the exercise of a bond fide claim of right, but without any intention to intimidate, insult, or annoy the person in possession, or to commit an offence, then although he may have no right to the land he cannot be convicted of criminal trespass, because the entry was not made with any such intent as constitutes the offence. So also if a person deals injuriously with property in the bond fide belief that it is his own he cannot be convicted of the offence of mischief, because his act was not committed with intent to cause wrongful loss or damage to any person. But the mere assertion of a claim of right is not in itself a sufficient answer to such charges. It is the duty of the Criminal Court to determine what was the intention of the alleged offender, and if it arrives at the conclusion that he was not acting in the exercise of a bond fide claim of right, then it cannot refuse to convict the offender, assuming of course that the other facts are established which constitute the offence.

5. In the case before the Court the Magistrate in effect finds not only that the petitioner had no right, but that he could not have been ignorant that he had no right. The facts found by the Magistrate show that the petitioner caused a change in the property of the complainant which affected it injuriously, nor is it any answer to the charges on which the petitioner has been convicted that the petitioner's intention was to benefit himself. That benefit was to be acquired, as he must have known by causing wrongful loss to the complainant. The objections taken by the petitioner's pleader to the propriety of the convictions cannot be sustained. I may, however, observe that, inasmuch as the acts of trespass and mischief were committed not by the petitioner himself but his workmen at his instigation, he would more properly have been convicted of the abetment of the offences, but there being no difference in the punishment to which he would be liable it is unnecessary to interfere with the convictions on this ground.

6. It remains for me to deal with the objection to the punishment. It must be admitted that the object of the trespass was to commit the 'mischief' imputed to the petitioner, and consequently under the third clause of Pearson 454 of the Code of Criminal Procedure, as explained by the illustrations, the petitioner must not receive a punishment more severe than might have been awarded for either of those offences. This provision of the law does not, as the petitioner's pleader suggests, prohibit the Court from passing sentence in respect of each offence established, but it declares that the offender must not receive for such offences collectively a punishment more severe than might have been awarded for any one of them, or for the offence formed by their combination. Where an offence is constituted by the combination of other offences or includes another offence, sentence should ordinarily be passed on the charge relating to that offence only, but the law does not prohibit several sentences, so that collectively they do not exceed the prescribed limit. For the offence of criminal trespass the maximum punishment sanctioned by the Penal Code is imprisonment for a term of three months and fine to the extent of Rs. 500. The imprisonment in default of payment of fine must therefore be limited to one-third of three months. The maximum punishment for the offence of mischief is imprisonment for three months and fine without limit, but the imprisonment in default of payment of fine is limited to one-third of the term of imprisonment. The Magistrate has sentenced the petitioner to

pay two fines each of Rs. 100, or collectively less than the amount of fine which might be imposed for either offence, and in default of the payment of each fine to undergo imprisonment for the term of fifteen days. The Magistrate has not declared that the terms of imprisonment are to be undergone the one on the expiry of the other, and if default were made in the payment of both fines the sentences would run concurrently, so that in the whole the punishment would not exceed the punishment allowed by the law for either of the offences of which the petitioner has been convicted. I therefore see no reason to interfere.

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