

State Vs. Shanker and ors.

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Court : Allahabad

Decided On : Dec-23-1957

Reported in : AIR1958All432; 1958CriLJ710

Judge : H.P. Asthana and ;S.N. Sahai, JJ.

Acts : [Constitution of India](#) - Article 14; [Code of Criminal Procedure \(CrPC\)](#) , 1898 - Sections 145, 417 and 417(1); [Indian Penal Code \(IPC\), 1860](#) - Sections 97

Appeal No. : Government Appeal No. 1512 of 1954

Appellant : State

Respondent : Shanker and ors.

Advocate for Def. : Rajeshji Verma, Adv. for Respondent No. 1, ;Maheswari Dayal and ;B.N. Katju, Adv.

Advocate for Pet/Ap. : Government Adv.

Disposition : Appeal allowed

Judgement :

H.P. Asthana, J.

1. This is an appeal by the State Government against the acquittal of the respondents on charges under Ss. 148 and 325 I. P. C. They were convicted by

the trial Court on both these charges and they were each sentenced to a fine of Rs. 50/- under Section 148, I. P. C., and three months' rigorous imprisonment and a fine of Rs. 75/- under Section 325, I. P. C. They appealed against their conviction and sentence which was allowed by the learned Sessions Judge, Meerut, who set aside their conviction and sentence.

2. It appears that Smt. Mantahari was the owner of certain plots. She executed a lease on 21-6-1946 in favour of the respondents Shanker and Asa who got possession over the plots. The rival party Balwant and Hari did not like the lease rights granted by Smt. Manbhari with the result that there was civil & criminal litigation between them on one side and Shanker and Asa on the other.

It may be mentioned here that in this litigation Smt. Manbhari supported the respondents, it appears that in the civil suit the issue on the question of pendency was remitted to the revenue court and the same was decided in favour of the respondents. Later on Balwant started proceedings under Section 145, Criminal P. C., on 19-3-1949 against the respondents Shanker and Asa. Smt. Manbhari was no party to this proceeding.

An application was made on the allegation that the rabi crop standing in the plots in dispute in 1356F had been raised by Balwant as a sub-tenant of Smt. Manbhari and that Shanker and Asa were trying to take forcible possession of the land and the crop. It was prayed that Shanker and Asa might be forbidden from interfering with his possession. The learned Magistrate called for a report from the Station Officer and directed him to attach the crop if he found any apprehension of the breach of the peace.

The Station Officer reported that there was some dispute between the parties and he made an attachment of the crop of 135GP. On receipt of the report from the Station Officer the learned Magistrate ordered the parties to file their written statements. In the meantime the Kharif crop of 1356F also came into existence and so Balwant made another application stating that the opposite parties were threatening to remove the said crop and that there was an apprehension of the breach of the peace.

The learned Magistrate again passed an order calling upon the Station Officer to inquire into the matter and to attach this crop also if he found that there was any apprehension of the breach of the peace. Both the parties filed their written statements and produced their evidence. The learned Magistrate was unable to come to any definite decision as to which party was in possession of the disputed plots and the crops in them on the relevant dates and he, therefore, ordered that the property would remain attached under Section 146 (1), Criminal P. C., to be released in favour of the party declared in rightful possession by a competent court.

This order was passed on 25-2-1950. On 8-9-1951, Smt. Manbhari made an application to the Magistrate that she was a tenant of the land in suit and was entitled to have the sale proceeds of the crop in deposit in the treasury and also possession over the land. The learned Magistrate passed an ex parte order on 28-11-1951 ordering that the property be released in her favour.

In pursuance of this order she obtained possession over the disputed plots. It is alleged by the prosecution that on the morning of 2-7-1952 she went to the disputed plots to get them ploughed and cultivated when the accused armed with lathis and spears arrived there and asked her not to cultivate the plots as they belonged to them.

It is further alleged that when Smt. Manbhari said that she had obtained possession over the plots and was entitled to cultivate them the accused started beating her and her daughter Smt. chhoti who had also come there with meals. It is further alleged that in the meantime the complainant and his brother Balwant also reached there on hearing the noise and tried to rescue Smt. Manbhari and her daughter and they too were beaten.

3. The defence of the accused was that the plots belonged to them & that they were entitled to beat Smt. Manbhari and her daughter and the injured persons in their right of defence of property. They denied the alleged beating.

4. The learned Magistrate after a consideration of the entire evidence was not satisfied that the accused had any right to beat Smt. Manbhari and others when

she had obtained possession over the plots in pursuance of the order of the Magistrate and that if the accused had any grievance against the said order the proper course for them was to get it set aside.

He, therefore, convicted and sentenced them. The learned Sessions Judge was of the opinion that the ex parte order passed by the Magistrate in favour of Smt. Manbhari was illegal and not binding on the respondents, that they were in actual possession of the plots in dispute and had a right to defend their possession against Smt. Manbhari and others who wanted to dispossess them. In view of this finding he set aside the conviction and sentence and ordered their acquittal.

5. At the time of the hearing of the appeal a preliminary objection was taken on behalf of the respondents that the appeal was not competent as Section 417 (1), Criminal P. C., which empowered the State Government to file an appeal to this Court from the appellate Court's order of acquittal passed by any court other than the High Court was ultra vires of the Constitution, as it contravened Article 14 of the Constitution.

This Article provides that the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. It was argued that as a private person had not been given the right of appeal against the order of the appellate court maintaining his conviction the State should not have been given the right to file an appeal against the order of acquittal passed by the appellate court and in giving this power to the State discrimination had been made between the individual and the State.

Article 14 contemplates equality before the law of person in the State. In order to decide whether Section 417. Criminal P. C., contravenes Article 14 of the Constitution it is necessary to consider whether the word 'person' used in the said Article includes the State. We are of opinion that 'State' is much wider than 'person' or 'persons' and is not included in 'person'.

It exists for the benefit of the society as a whole and not for the benefit of any individual person or persons, whereas the 'person' used in Article 14 refers to individuals or a body of persons who have formed an association. In our opinion

the State has been given the right to file an appeal against an order of acquittal on the ground that it will not misuse that right or abuse it and will act only if it considers that in the interest of the society it is necessary that an appeal should be filed against the order of acquittal.

In the case of an individual there is a danger of his abusing the right of filing an appeal against the appellate order of conviction if such a right were given to him. Even in the case of an acquittal by the appellate court the complainant or any individual person has not been given the right of appeal because it could not be said that that right would be exercised by him for the benefit of the entire society and not only towards his own end.

It is on the same principle that the State has been given a longer period of limitation for filing an appeal against an order of acquittal, whereas the convicted person has been given a much shorter period for filing an appeal against the order of conviction. It has not been contended for the respondent that there was a discrimination between the State and an individual person on the ground that the former had been given a longer period of limitation than the latter.

The State has to consult so many bodies before filing an appeal and it is one of the reasons why it has been given a longer period of limitation. It is not so in the case of an individual who has to consult his lawyer only.

6. In *Sheo Prasad v. Punjab State*, (S) AIR 1957 Punj 150 (A), it was held that the natural and obvious meaning of the expression 'person' in Article 14 of the Constitution was a living human being, a man, woman or child, an individual of the human race, that this word included natural persons and artificial persons like Corporations and Joint Stock Companies, but it did not include a State or Government.

It was further held that though a State was a moral person having an understanding and a will capable of possessing and acquiring rights & of contracting and fulfilling obligations, a State in its political organisation was entirely different and distinct from the inhabitants who might happen to reside there, that though Government in common parlance was synonymous with the State in actual

fact the State was a country or assemblage of people while the Government was a political agency through which it acted, that though the State was capable of suing and being sued it was not so because the State was person tout because Article 300 of the Constitution had made an express provision in that behalf, that neither a State nor a Government could fall between the ambit of the expression 'person' appearing in Article 14 of the Constitution.

It was also held in this case that where the State acting as such reserved itself certain rights which were denied to other persons in similar circumstances, the provisions of Article 14 were not violated and that the liberty guaranteed by the due process of the American Constitution was the liberty of the natural and not artificial person.

7. In *Bank of India v. John Bowman*, (S) AIR 1955 Bom 305 (B), their Lordships Chagla O.J., and Dixit J., made the following observation:

'It is not true to say that the State is denying equality before the law to any person by claiming this special privilege. Article 14 of the Constitution would only be offended against if the State made a discrimination between one creditor and another or between one class of creditors and another. The principal of common law is that the State has priority over all competing, creditors if the debts are of the same quality. The State here is not claiming as a creditor.

It may be a creditor but the right which it claims is in its capacity as State and its contention is that as it is the custodian of public welfare, as moneys which it is claiming belong to the coffers of the State and are to be used in public interest, it should be given preference over private creditors who have not to discharge the duties or responsibilities of the State.

Therefore the common law with regard to priority of debts due to the State is not in any way inconsistent with the fundamental rights-embodied in Part III of the Constitution.'

8. In *Abdul Ali Abdul Rahman v. Mst. Jannat*, (S) AIR 1957 All 552 (C), it was observed by Oak J., that considering the special position held by the State in

criminal jurisprudence, the Legislature was justified in placing the State on a special footing as regards appeals against acquittals.

So the various provisions of Section 417, Criminal P. C., for appeals by the State Government and appeals by private complainant could be Justified on the principle of reasonable classification and did not offend against Article 14 of the Constitution. The reason given by the learned Judge in support of the above observation was stated as follows:

'Although Sub-section (1) of Section 417, Criminal P. C., enables the State Government to file appeals against orders of acquittal, in practice the State Government files appeals in only a small percentage of cases of acquittal, it is expected that a State Government will file such an appeal only when it is expedient in public interest.

On the other hand there is danger of frivolous appeals by private complainants against orders of acquittal. The State represents society as a whole. On the other hand a private complainant is mainly concerned with his personal interest.

Very often a private complainant is actuated by feelings of revenge. The State Government is expected to file appeals in the interest of Society as a whole. There is no such obligation on a private complainant. For this reason the Legislature has given more latitude to the State Government for filing appeals against acquittals.

The recent amendment of the Code has permitted appeals by private complainants to a limited extent. The Legislature must have been aware that there is danger of courts being flooded by appeals by private complainants in frivolous case.

In order to stop such frivolous appeals, the Legislature has laid down that a private complainant must obtain special leave from a High Court for filing an appeal against an acquittal. Considering the special position held by the State in criminal Jurisprudence, the Legislature was justified in placing the State on a special footing as regards appeals against acquittals.'

9. In *In re Krishnayya*, (S) AIR 1957 Andh-Pra 163 (D), it was held that the contention that Section 417, Criminal P. C., discriminated between the State and the complainant in insisting upon the latter obtaining special leave to appeal before presenting an appeal while there was no such limitation upon the State's right of appeal & that the State was given the longer period of limitation for filing appeals against acquittals than the time allowed to private complainants, had no force because there was no contravention of Article 14 of the Constitution as it did not preclude the State being treated by the Legislature on a footing different from an individual citizen and that the difference was based upon grounds of high policy.

10. Learned counsel for the respondents relied on *Shree Meenakshee Mills Ltd., Madurai v. A.V. Vishvanatha Shastri*, (S) AIR 1955 SC 13 (E). It was held in this case that Article 14 guaranteed to all persons the right of equality before the law and equal protection of the laws within the territory of India, that this Article not only guaranteed equal protection as regards substantive laws but procedural laws also came within its ambit, that the implication of the Article was that all litigants similarly situated were entitled to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination.

It appears that the class of persons alleged to have been dealt with, by Section 5 (1) of the Taxation on Income (Investigation Commission) Act was comprised of those unsocial elements in society who during recent years prior to the passing of the Act had made substantial profits and had evaded payment of tax on those profits and whose cases were referred to the Investigation Commission before 1-9-1948.

Assuming that evasion of tax to a substantial amount formed a basis of classification at all for imposing drastic procedure on that class, the inclusion of only such of them whose cases had been referred before 1-9-1948 into a class for being dealt with by the drastic procedure, leaving other tax evaders to be dealt with under the ordinary law, would be a clear discrimination for the reference of the case within a particular time, had no special or rational nexus with the necessity for drastic procedure.

11. We do not think that the principle underlying this decision is applicable to the facts of the present case. There is nothing in this decision that the State was included in the definition of 'person' in Article 14 of the Constitution or that there was any discrimination simply because the State as representing the society had been given the right of appeal against the appellate order of acquittal whereas no such, right had been given to a private individual.

12. On a consideration of the various authorities which have been cited above we are of opinion that the State as representing the society is not included in the word 'person' in Article 14 of the Constitution and that merely because the State has been given the right of appeal against an appellate order of acquittal which right has not been given to a private individual, there is really any discrimination under Article 14 of the Constitution.

In the circumstances we are of opinion that Section 417 (1), Criminal P. C., is not ultra vires of the Constitution and the contention on behalf of the respondents has therefore no force.

13. Coming now to the merits of the case, we find that the order of the lower appellate court cannot be maintained. It appears from an examination of the record that the property in dispute which consisted of certain plots and the crops therein was under attachment in a proceeding under Section 145, Criminal P. C. It is also clear from the record that Smt. Manbhari was not Party to the proceeding under S, 145, Criminal P. C., that this proceeding had been started by one Balwant against the respondents Shanker and Asa who were claiming possession over the disputed plots.

It further appears from the record that on 25-2-1950 the learned Magistrate passed an order that the property in dispute would remain attached under Section 146 (1) Criminal P. C., as he was unable to come to any decision as to which of the parties was in possession of it on the relevant date. He further ordered that the attachment would continue and that the property would be released in favour of the party who obtained a declaration in respect of his possession from a competent court.

On 8-9-1951 Smt. Manbhari made an application to the Magistrate that she was tenant of the land in suit and was entitled to possession over the disputed land and also to the sale proceeds of the crop deposited in the treasury and the learned Magistrate passed an ex parte order on 28-11-1951 ordering that the property should be released in her favour.

In pursuance of this order she obtained possession over the disputed land and executed a dakhnama for the same. After obtaining possession she went to cultivate the disputed land with Balwant, his brother Hari Ram and her daughter Smt. Chhoti when they were all severely beaten by the respondents.

Balwant received no less than 21 injuries consisting of lacerated wounds, stab wounds, incised wounds, fracture of the bones of the left leg and permanent deprivation of the right upper central incisor. Smt. Manbhari received three injuries consisting of two incised wounds and one bruise. Smt. Chhoti received 8 injuries consisting of one contused wound and seven bruises and Hari Ram received eleven injuries consisting of one incised wound and a number of bruises.

It has been contended on behalf of the State that the respondents had no right to beat Smt. Manbhari and her companions when they went to cultivate the disputed land after obtaining the dakhnama in pursuance of the order of the Magistrate and that in any case the respondents were not entitled to cultivate the disputed land when it was under attachment in proceedings under Section 145, Criminal P. C., between them on one side and Balwant and others on the other side, even if the release order in favour of Smt. Manbhari was held not to be legal.

There can be no doubt that the respondents had no right to take possession of the disputed land when it was attached in the proceeding under Section 145, Criminal P. C. If they had any grievance against the ex parte order passed in favour of Smt. Manbhari their proper remedy was to apply to the Magistrate to have that order set aside and not to take the law in their own hands and start beating Smt. Manbhari and others when Smt. Manbhari went to cultivate It after having obtained the order from the Magistrate.

It further appears from the nature and the number of injuries found on the person of Balwant and his son Hari Ram and the two ladies Smt. Manbhari and her daughter Smt. Chhoti that the main object of the respondents was not to stop them from ploughing the disputed land but to teach them a lesson for their past conduct, which had led to the proceedings under Section 145, Criminal P. C.

It, may not be out of place to mention here that before the proceeding under Section 145, Criminal P. C., there had been civil litigation between the respondents and Balwant in respect of the disputed land. Smt. Manbhari had executed a lease in respect of it in favour of the respondents which was challenged by Balwant and others but in which they were unsuccessful. The respondents thought that they were being unnecessarily harassed by Balwant and others and Smt. Manbhari was supporting them and they, therefore decided to teach them a lesson by giving them a severe beating.

There is ample evidence on the record that the respondents beat Balwant and others when they went to cultivate the disputed land and on this point the findings of the courts below are concurrent. In our opinion the conduct of the respondents in beating Smt. Manbhari and others when they had gone to plough the land in dispute in pursuance of the order of the Magistrate, even though the order was ex parte, was unjustified. It could not be said that they had any right of defence of property and it was in the exercise of such right that they had inflicted the injuries on Smt. Manbhari and others.

We do not agree with the learned Sessions Judge that merely because the order of the learned Magistrate in favour of Smt. Manbhari was ex parte it would have no legal effect and that the respondents could ignore it and beat her when she went to cultivate the disputed land in pursuance of this order. As we have already pointed out above the proper course for the respondents was to have that order set aside.

14. We are, therefore, of opinion that this appeal should be allowed and the order of the lower appellate Court acquitting the respondents should be set aside. Accordingly we allow this appeal set aside the order of the lower appellate Court, restore that of the trial Court and convict the respondents under Section 148 and

Section 325 used with Section 149, I. P. C. and sentence each of them to a fine of Rs. 50/- under Section 148, I. P. C., in default each of them to undergo rigorous imprisonment for one month, and three months rigorous imprisonment and a fine of Rs. 75/- under Section 325/149, I. P. C., in default of payment of fine each of them to undergo 1 1/2 months' further rigorous imprisonment. As the respondents are on bail they shall surrender and serve out their sentences.

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