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Ram Samujh and ors. Vs. State

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Court : Allahabad

Decided On : Oct-12-1966

Reported in : AIR1967All579; 1967CriLJ1586

Judge : D.P. Uniyal, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 188 and 454; Code of Criminal Procedure (CrPC) - Sections 145

Appeal No. : Criminal Revn No. 542 of 1965

Appellant : Ram Samujh and ors.

Respondent : State

Advocate for Def. : Asst. Govt. Adv.

Advocate for Pet/Ap. : T. Rathore, Adv.

Disposition : Petition dismissed

Judgement :
ORDER

D.P. Uniyal, J.

1. The applicants have been convicted under Sections 454 and 188 I. P. C. and have been sentenced to various terms of imprisonment.

2. It appears that there was dispute between one, Jagdeni and the accused persons over the possession of a house. It resulted in proceedings under Section 145 in the court of Sub-Divisional Magistrate of Shahganj. On 14thMarch, 1964 the Magistrate passed a preliminary order and directed the attachment of the property, which was given in the possession of Ramraj Supurdar The police locked the house and handed over the key to the Supurdar. On 19th July, 1964 the accused approached the Supurdar and demanded the key from him, On his refusal to hand over the key the accused broke open the lock and took forcible possession of the house.

On the following day the Supurdar moved an application in the court of Sub-Divisional Magistrate complaining of the forcible occupation of the house by the applicants. Thereupon the Magistrate filed a complaint against the accused under Section 188 I. P. C. Both the courts below had recorded a finding, that the accused took forcible possession of the house by breaking open the locks and that they disobeyed the order of the Magistrate promulgated by him on 14th March, 1964. They further held that the accused were guilty of house breaking in order to commit the offence of theft.

3. The sole point urged by the learned counsel was that no order under Section 188 I. P. C. was promulgated by the Magistrate and, therefore, the applicants were not liable to be convicted. It was contended that what is made punishable under Section 188 is ah order made by a public functionary in the public interest and that an order requiring a private party not to interfere with the possession of another would not amount to 'promulgation' of an order.

4. Reference was made to a Division Bench case of Dalganjan Koeri v. State, AIR 1956 All 630 in which it was stated that:

'The disobedience of an order promulgated by a public servant, which has been made punishable by Section 188 I. P. C. must be a disobedience which causes or tends to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed. This also suggests that orders contemplated under Section 188 I. P. C. are orders made by public functionaries in the public interest. The disobedience of any order passed in favour of a party to

the litigation by a court may result In annoyance to the party in whose favour it has been passed, but it cannot be said that it necessarily causes or tends to cause obstruction or annoyance or injury to any person.'

It was further observed:

'Section 188 I. P. C. does not contemplate orders passed by civil or revenue courts in judicial proceedings.'

From this it was sought to be argued that inasmuch as the preliminary order was passed by a criminal court the disobedience of such an order would not amount to an offence under Section 188 I. P. C.

5. It seems to me that the learned counsel has not read the judgment carefully and has not been able appreciate the principle laid down by the court in that case. In the abovenoted case the learned Judges were careful to point out at page, 631 that:

'The matter was finally decided on the facts of that case State v. Smt. Tugla, AIR 1955 All 423 and the opinion of the majority of the Judges was that an order under Section 145, Cr. P. C. was an order the breach of which was punishable under Section 188 I. P. C. as to the parties to that order but this decision did not deal with the question of orders passed in judicial proceedings by civil, revenue or criminal courts.'

6. What was meant by the learned Judges was that judicial proceedings relating to prosecution of an accused before a criminal court are not governed by Section 188 I. P. C. The above decision, therefore, far from supporting the learned counsel goes against him.

7. The question as to whether Section 188 I. P. C. applied to the disobedience of an order made under Section 145 Cr. P. C. was directly raised in Jagpal Singh v. State, 1959 All LJ 163 and the matter was fully and thoroughly discussed by A. N. Mulla, J. After reviewing the case law on the point he stated the legal position thus:

'It is obvious that the final order passed in Section 145 proceedings under Sub-section (6) is a promulgation at least as far as the parties to that proceedings are concerned. The word 'promulgation' in essence means that the contents of the order which is promulgated should be known to the person against whom proceedings are taken under Section 188, I. P. Code. Section 188, I. P. Code includes in its ambit both executive order and judicial orders. The executive authorities cannot make their orders known to the public at large without adopting some form of promulgation. They do not pass any orders in a case in which they pronounce a judgment. It was perhaps for this reason that the word 'promulgated' was used in Section 188 I. P. Code. On the other hand the pronouncement of a judgment in open court is a promulgation to the parties to that case. As Section 188 I. P. Code is enacted to ensure public tranquility, health, safety and convenience, it is obvious that the order of the public servant whether on the executive or on the judicial side which is made for this purpose is governed by Section 188, I. P. Code. A judgment or an order passed in open court constitutes a formal declaration to the public of the decision of the court in the case in which the order is given or the judgment is passed. I am, therefore, of the opinion that Section 188 I. P. Code includes in its ambit the orders passed under Section 144 Cr. P. C as well as Section 145. Cr. P. C.'

8. In the present case the Magistrate had passed the impugned order in the presence of parties and it was known to both of them. Ram Raj Supurdar stated on oath that when possession was handed over to him by the police it was proclaimed by the beat of drum that the house had been attached and possession delivered to the Supurdar. Even if the word 'promulgated' was construed in a narrow sense of being a public declaration by an authority that a certain order had been made with respect to certain property, there was sufficient evidence in the case to show that the matter had been brought to the notice of the parties and the public in general by beat of drum that the property had been attached and handed over to the possession of Supurdar. Therefore the formality of a formal declaration was also gone through in this case. In the circumstances, I have no hesitation in holding that the conviction of the applicant under Section 188 I. P. C. is legally sound.

9. On the proved facts of the case theconviction of the applicants under Section 454 I. P. C.was richly deserved. I therefore uphold theorder of the Sessions Judge and dismiss theapplication in revision. The applicants are onbail. They shall surrender to their bail andserve out the sentences awarded to them.

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