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Man Singh Vs. State

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Court : Allahabad

Decided On : May-15-1979

Reported in : 1979CriLJ1433

Judge : M.P. Saxena, J.

Appellant : Man Singh

Respondent : State

Judgement :
ORDER

M.P. Saxena, J.

1. Man Singh was convicted by the Special Judicial Magistrate, 1st Class, Bulandshahr, under Sections 447 and 434, Indian P.C. and was sentenced to one month's rigorous imprisonment and to a fine of Rs. 100/- under the first count and to two months' rigorous imprisonment and to a fine of Rs. 200/-under the second count. It was further ordered that Har Prasad Sharma complainant will be delivered possession over the property from which he was wrongfully dispossessed by Man Singh. This order was passed under Section 456, Criminal P.C. of the new Code. In appeal the learned Additional Sessions Judge, maintained the conviction under both the counts but reduced the sentence to a fine of Rs. 200/- and in default of its payment td one month's rigorous imprisonment under Section 447, Indian P.C. and to a fine of Rs. 300/-and in

default of its payment to two months' rigorous imprisonment under Section 434, Indian P.C. The order passed under Section 456, Criminal P.C. does not seem to have been interfered with. 2. Briefly stated the facts are that Har Prasad Sharma, opposite party, is the owner of plot No. 800 (3 biswas 2 biswansi) situate in village Ichhawari, Police Station Debai, District Bulandshahr. He was in possession of this plot and got its demarcation done on 13-2-1972. On 12-7-1974 when he had gone to Meerut the revisionist and one Ram Swarup took forcible possession over the plot after demolishing mend which was fixed in the demarcation proceedings. They fixed hand pipe and also placed a Jhopari. On 15-7-1974 when he returned from Meerut he asked the revisionist and Ram Swarup to deliver possession of the plot. They promised to do so after sometime but did not actually place him in possession of the same. On 6-8-1974 he again asked them to hand over possession of the plot but the revisionist and Ram Swarup abused him and threatening him with dire consequences. On 28-8-1974, Har Prasad gave a notice to the revisionist and Ram Swarup as required by Section 441, I.P.C. as amended by the U.P. Act No. 31 of 1961 but Ram Swarup refused to take that notice and the revisionist gave a false reply. Therefore, on 20-9-1976 a complaint under Sections 434, 447, 427, 504 and 506, I.P.C. was filed against both the persons. Thereafter Ram Swarup entered into a compromise with the complainant and handed over possession of the property on which he had taken forcible possession and the case proceeded against the revisionist alone under Sections 434, 447, I.P.C.

3. The revisionist admitted that demarcation of plot No. 800 was done by the Supervisor Kanoongo but he denied that he had demolished any Mend or taken forcible possession over any part of that plot. According to him he was in possession of the disputed land for more than eleven years and no Mend was actually fixed by the Qanungo. In support of his contention he had examined two witnesses, namely, Prem Singh (D. W. 1) and Rajvir Prasad (D. W. 2).

4. After going through the evidence on the record the learned trial court believed the complainant's story and convicted and sentenced the revisionist under both the counts. He also passed an order under Section 456, Criminal P.C. as stated above. The appeal filed against it was dismissed but the sentence awarded was

modified. Hence Man Singh has come up in revision to this Court.

5. There is no controversy that plot No. 800 (3 biswa 2 biswansi) belongs to Har Prasad Sharma, opposite party. Section 434, Indian P.C. lays down that 'whoever commits mischief by destroying or removing any landmark fixed by the authority of a public servant, or by any act which renders such landmark less useful as such shall be punished with imprisonment of either description for a term which may extend to one year, or with fine, or with both.' The primay question, therefore, for consideration is whether demarcation of this plot was done in accordance with law. The complainant adduced satisfactory evidence to establish this fact. There is material on the record to show that demaracation case No. 105 of 1972 was initiated in the court of the Sub-Divisional Officer concerned. Under his orders the Supervisor Kanungo had gone to village Ichhawari and got the demarcation done in the presence of the Pradhan with the consent of the parties. His report is D/- 22-9-1973, Ext. Ka. 1. It was submitted by the Tahsildar to the Sub-Divisional Officer recommending that the demarcation was done with the consent of the parties and no further action was needed. The Sub-Divisional Officer confirmed the report of the Supervisor Kanungo and ordered the file to be consigned to the record room. The complainant gave satisfactory evidence to show that the demarcation was done in the manner prescribed. The revisionist did not challenge this fact. Now an attempt is made to show that the Sub-Divisional Officer was not competent to get the demarcation done. Section 41 of the U.P. Land Revenue Act relates to settlement of boundary disputes. It says that all disputes regarding boundaries shall be decided as far as possible on the basis of existing survey maps but if this is not possible, the boundaries shall be fixed on the basis of actual possession. It further states that the boundary shall be fixed accordingly.

6. Section 227 lays down power of an Assistant Collector in charge of sub-division. It states that an Assistant Collector in charge of a sub-division of a district shall inter alia, have powers to decide disputes and to pass orders under Sections 40, 41 and 43 of the Act. Section 40 deals with the power of the Collector to decide boundary disputes between the parties and under this Section he is empowered to make enquiries in respect of boundary disputes and thereafter put the person if dispossessed into possession and fix boundary in case they are demolished.

7. In Sub-clause (8) of Section 227 of the Act same powers are given to the Assistant Collectors or Sub-Divisional Officers as are given to the Collector under Section 40. Therefore, the Collector and the Assistant Collector in charge, of a sub-division are both empowered to decide the boundary disputes and if a boundary is demolished, to have it fixed accordingly after survey. In the instant case the Sub-Divisional Officer was competent to get the demarcation done. As stated above it was carried out in accordance with law. Therefore, there can be no manner of doubt that the demarcation and fixation of boundary mark of plot No. 800 was done as prescribed by law. There is evidence of clinching nature to prove that the revisionist had removed the said boundary mark and thereby committed an offence punishable under Section 434, I.P.C. He was rightly convicted under this count and the sentence awarded does not at all err on the side of severity.

8. So far as the offence under Section 447, I.P.C. is concerned it cannot be said to have been established in this case because Section 441, Indian P.C. as it stands amended by U.P. Act No. 31 of 1961 reads as follows:

Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property or having lawfully entered into or upon such property unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, or having entered into or upon such property, whether before or after the coming into force of the Criminal Laws (U.P. Amendment) Act, 1961, with the intention of taking unauthorised possession or making unauthorised use of such property fails to withdraw from such property or its possession or use, when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice, is said to commit criminal trespass.

In the instant case the complainant alleged that the charge under Section 447, I.P.C. was made out because he had given a notice in writing to the revisionist to withdraw from the land over which he had taken unauthorised possession, but he failed to do so, The charge under Section 447, I.P.C. was not based on the ground that the revisionist had entered into possession of the land with intent to insult,

annoy or intimidate him. Therefore, he could not fall back upon this ground if he based his claim on Clause (ii) of Section 441, I.P.C. As held in Ram Swarup v. State 1977 All Cri C 165 notice under Section 441 should specify the date calling upon the trespasser to vacate the property and if he fails to do so by that date he will be deemed to be a trespasser and liable to be convicted under Section 447, I.P.C.

9. In the instant case no date was specified in the notice by which the revisionist should have vacated the land. He was required to do so within fifteen days from the date of receipt of the notice. It was not in conformity with the provisions of Section 441, I. P. c. and for non-compliance of this notice the revisionist could not be convicted under Section 447, I.P.C.

10. The case may be examined in the light of para 1 of Section 441 also. The complainant nowhere gave that the revisionist had dispossessed him with intent to insult, annoy or intimidate him. Therefore, the allegations made in the complaint do not constitute an offence under para 1 and the question of appreciating the evidence does not arise. This view finds support from the cases of R. P. Kapur v. State of Punjab : 1960 CriLJ1239 and Shri Chand Gobindram Nagpal v. M. Lakshmanan 1971 Cri LJ 1400 (Mad).

11. It is needless to say that in order to establish that the entry on the property was with intent annoy, intimidate or insult, it is necessary for the court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry and it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance, intimidation or insult and that this likely consequence was known to the person entering. In every case where entry causes annoyance or insult it cannot be said to be actuated by the intention to cause the said result. There is distinction between knowledge and intention and that distinction must be kept in mind in deciding whether in a particular case entry was with requisite intention. The said intention has always to be gathered from the circumstances of the case but it is not possible to accede to the argument that the likely consequences of the Act and its possible knowledge must necessarily import the corresponding intention. This view is in accord with the principle laid down in

the case of Punjab National Bank Ltd. v. All India Punjab National Bank Employees Federation : (1959)IILLJ666SC and Smt. Mathri v. State of Punjab : [1964]5SCR916 . In this case no satisfactory evidence was adduced td prove the requisite intention and in its absence the revisionist's conviction under Section 447, I.P.C. cannot be sustained.

12. Another question which arises for consideration is about the re-delivery of possession over the property from the opposite party was dispossessed. The order of re-delivery of possession was passed under Section 456 of the new Cri. P.C. (552 old) which reads as follows:

When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property.

Provided that no such order shall be made by the Court more than one month after the date of the conviction.

There is no controversy in this case that the complainant opposite party was dispossessed during his absence. In Sirajuddin v. Dharma 1965 All LJ 736 a Division Bench of this Court had held that where the possession of the property was taken in the absence of the complainant and his family members the question of any criminal force our show of force having been exercised by the accused against him for obtaining possession of the property does not arise and the very basis for the exercise of the power under Section 522(1), Cr. P.C. (old) becomes non-existent. The same view was taken in the case of Sita Ram v. State of Uttar Pradesh 1965 All LJ 372. According to this view the ingredients of Section 456, Criminal P.C. were not established and the order of re-delivery of possession could not be passed.

13. The revisionist's learned Counsel relied on the case of Mahabir v. Rex AIR 1949 All 228 which was also decided by a Division Bench of this Court and in

which it was held that the dispossession of the complainant becomes complete when he appears on the scene, protests and has to go away. If even at that time the accused do not quit the land when the true owner protests against unauthorised entry and are ready to fight, the di-fence can be said to have been attended by 'show of force'. Show of force may consist in the physical presence of the accused, his servants or companions in such a way that the true owner is put to fear that if he tried to regain possession by force he will be met by force. In the instant case there is not an iota of evidence on the record to show that on arrival from Meerut when the complainant approached the revisionist, the latter or his companion or servant made any gesture as to indicate to the complainant that they were not prepared to vacate or were ready to fight if forced to vacate the land. On the other hand the complainant admitted in his statement that when he first approached the revisionist and Ram Swarup they promised to vacate the land sometime after. It was after sometime that they refused to do so and are alleged to have given threats. In this view of the matter Section 456, Cr. P.C. was not applicable and the order of re-delivery of possession over the property could not be made.

14. In view of the aforesaid discussions the revisionist's conviction under Section 447, I.P.C. and the sentence awarded thereunder are set aside. The fine, if deposited, shall be refunded to the revisionist. His conviction under Section 434, Indian Penal Code and the punishment awarded thereunder are confirmed. The fine will be deposited within one month of the receipt of the record by the trial court failing which he will be taken into custody to serve out his sentence. The order of re-delivery of possession passed under Section 456, Criminal Procedure Code is set aside.

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