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Court : Rajasthan

Decided On : Apr-17-1973

Reported in : 1973(6)WLN298

Judge : L.S. Mehta, J.

Appeal No. : S.B. Criminal Reference No. 240 of 1972

Appellant : Bhoop Singh

Respondent : State and ors.

Judgement :

L.S. Mehta, J.

1. This is a reference submitted by Mr. T.R. Sharma, Sessions judge, Bharatpur, recommending that the order of the Sub-Divisional Magistrate, Bharatpur, passed on October 27, 1971, whereby he commenced proceedings under Section 107/117, Cr.P.C., against party No. 2 Bhoop Singh and others, residents of Dayawali, police station, Nadbai, be quashed and set aside.

2. It appears that on the aforesaid date Circle Inspector (Halka Girdawar) had submitted a report that Bhoop Singh and others had wrongfully brought under the plough pasture and 'Ghair Mumkin' passage land (Khasra No. 782), situate in village Dayawali and that they were likely to commit breach of the peace or disturb

the public tranquillity, On receipt of the above report the Sub-divisional Magistrate ordered the registration of the case under Section 107/117, Cr. PC, and directed that warrants of arrest should be issued against Bhoop Singh and others for compelling their attendance before the Court. Aggrieved by that order, Bhoop Singh preferred a revision-petition in the court of the Sessions Judge Bharatpur. Learned Sessions Judge made the following observation:

It (Section 107, Cr. P.C.) can hardly be invoked in order to oust a trespasser from Government land as has been done by the learned Sub-Divisional Magistrate in the present case. In my opinion, the order can not be sustained and it is a fit case for being reported to the Hon'ble High Court under Section 438 of the Criminal Procedure Code.

He has accordingly submitted this reference to quash the impugned order.

3. There is ample material in the judgment of the learned Sessions Judge, Bharatpur, to show that proceedings under Section 107, Cr.P.C., are not quite appropriate in the circumstances of the present case. There is no doubt that there was a keen dispute about Khasra No. 782, situate in village Dayawali This is evident from the explanation furnished by the Sub Divisional Magistrate. From his report it appears that Bhoop Singh and others trespassed into Khasra No. 782 of village Dayawali. According to him the land in dispute had already been allotted to 13 persons of Scheduled Castes and Scheduled Tribes of the same village. As a result of the trespass the allottees and the trespassers had a fight and that it resulted in a criminal case pending in the court of the Munsiff-Magistrate, Bharatpur. In a case like this the proper procedure would have been to institute proceedings under Section 145, Cr.P.C. and to decide the dispute as to possession once for all so far as the criminal court is concerned. The learned Magistrate, however has not adopted that course. Another course, which was open to the Magistrate was to initiate proceedings under Section 107, Cr. P C, against both the parties to the dispute & to bind down the party which was proved to be not in possession of the land. Learned Magistrate has, on the other hand, chosen to proceed only against Bhoop Singh and others. Besides, in the present proceedings under Section 107, Cr.P.C., the learned Magistrate while passing an

order for the issue of process against party No. 2 failed to specify in what way and with reference to what matter they were likely to commit a breach of the peace or in what way they were likely to do a wrongful act which might occasion a breach of the peace. It is not difficult to say that a vague proceeding like this cannot be supported.

4. In the light of the above discussion and having regard to the circumstances of the case, I set aside the order, dated October 27, 1971. of the Sub-divisional Magistrate, Bharatpur, directing proceedings under Sections 107/117, Cr.P.C., to be drawn up against Bhoop Singh and others and quash the proceedings.

5. I may, however, observe that if the Magistrate is satisfied at any time that there is an apprehension of breach of the peace arising out of the dispute between the two parties Bhoopsingh and ors. on the one side and the persons of the Scheduled Castes and Scheduled Tribes on the other with regard to the land in question, the proper course for him would be to institute proceedings under Section 145, Cr.P C, or to proceed under Section 107, Cr.P.C., against both the parties, binding down the party who is proved to be not in possession of the land.