

Sultan Khan Vs. State of Rajasthan

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Court : Rajasthan

Decided On : Dec-11-1989

Reported in : 1990WLN(UC)49

Judge : K.S. Lodha, J.

Appeal No. : S.B. Cr. Misc. Petition No. 286 of 1989

Appellant : Sultan Khan

Respondent : State of Rajasthan

Disposition : Application allowed

Judgement :

K.S. Lodha, J.

1. By this application Under Section 482, Cr. P. C. the petitioner has challenged the framing of charge of an offence Under Section 379, I.P.C. against him by the learned Munsif & Judicial Magistrate Ladnu, by his order dated 22-6-1989.

2. I have heard the learned Counsel for the petitioner and the learned P.P. and have perused the record.

3. It appears that on 1-1-1968 Patwari, Landu made a report to the Tehsildar to the effect that the petitioner Sultan Khan was raising un-authorised constructions on

agricultural land o Khasra No. 1142 in village Ladnu. Thereupon, the Tehsildar directed the Inspector. Land Record to take the building material in possession and get the unauthorised constructions stopped. The Inspector then proceeded to the spot and prepared the report in respect of the un-authorized construction. Later, when the building material which was said to have been taken in possession by the Land Revenue Inspector on 2-6-1988, was sought to be auctioned, it was found that it had already been removed and used by the petitioner and was not available for being auctioned. Thereupon, the matter was reported to the Police and the Police put up a challan against the accused, for offence Under Section 379, IPC, whereupon, the learned Magistrate framed the charge as aforesaid. The learned Counsel for the petitioner, inter alia, alleged that it has no where been shown that as a matter of fact the building material had ever been taken possession of by the Inspector, Land Records and it continued to be in possession of the petitioner, therefore, the petitioner could not have been held guilty for offence Under Section 379, IPC even if he had removed or used that material. He also urged that if at all the petitioner was raising un-authorized construction after encroaching upon Government land, proceedings Under Section 91, Land Revenue Act could have been started against him but even under those proceeding the buildings material could not have been seizes like this without first asking the petitioner to remove the encroachment. The learned P.P. on the other hand, urged that when the Inspector, Land Records had reached the spot and found that un-authorized construction was being raised on the Government land and building material was lying thereon and reported the matter to the Tehsildar for further action, it much be deemed that the building material had been taken possession of by the Inspector, Land Records and when once the possession was taken by the Land Records Officer, the petitioner had no right to remove or use any part of that material. If he after these proceedings had removed or used any part of the material, an offence Under Section 379, I.P.C. would prima facie, be made out against him and therefore the charge framed against him is a proper.

4. I have given my careful consideration to the rival contentions. It may at once be stated that from the report prepared by the Inspector, Land Records, it clearly appears that as a matter of fact the building material had not been taken possession of by the Land Records Officer and later, of course, some interpolation

appears to have been made in the report In the middle of the report the Land Records Inspector had mentioned ekSds ij iRFkj yxkuk ,d gtkj eu ik;s x;s xqjM+ 200 eu ds yxHkx iMh ik;h x;h ftls lk/ku miyC/k u gksus ds dkj.k ekSds ls gV;k;k ugh tk ldk rFkk ugh (this word ^^ugh^^ Now appears to have been scored out) ljdkjh rglhy es fy;k tk ldk A

Then at the bottom of the report a further line appears to have been inserted by was of interpolation in a small hand, in the available space sayings rkdjh lkeku esjs }kjk ljdkjh rglhy es fy;k x;k gS A iVokjh dks lqinZ fd;k A

Now this part of the report at the bottom of the report is clearly in contravention of what has been stated in the body of the report earlier. According to the earlier report the material could not be removed from the spot and taken possession of, where as in the bottom it is stated that possession has been taken of the material lying on the spot. Even if for the sake of argument the word ljdkjh rglhy in between rFkk and ^^ugh^^ is deemed to have been score out at the time of the writing of this report itself, the facts proceeding it clearly show that the material had not been taken possession of. Those facts are that for want of means the material could not be removed from the spot. Be that it may, in any case even if this matter is left to be clarified at the stage of evidence no useful purpose would be served because the circumstances are so outstanding that a very serious doubt shall still continue with regard to the fact whether the possession of the building material had been taken by the Inspector of Land Records or not and in presence of such a serious doubt, the trial cannot end in the conviction of the petitioner.

5. The other contention raised by the learned Counsel for the petitioner is also not altogether without substance because from the material on record it does not appear that proceedings Under Section 91 of the Land Revenue Act had been initiated against the petitioner and the petitioner had been called upon to remove the encroachment Therefore, also, the possession of the material could not have been taken from him.

6. In view of what has been stated above the learned Magistrate was not justified in framing the charge Under Section 379, IPC against the petitioner and the charge deserves to be quashed.

7. The application Under Section 482, Criminal Procedure Code is allowed and the charge Under Section 379, Indian Penal Code framed against the petitioner is quashed.

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