

Nijamuddln and ors. Vs. State of Rajasthan and anr.

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Court : Rajasthan

Decided On : Mar-23-1994

Reported in : 1994CriLJ2344; 1994(1)WLN603

Judge : B.R. Arora, J.

Acts : Rajasthan Municipalities Act, 1959 - Sections 117, 203, 203(1), 203(2), 203(15), 203(18), 203(19) and 265; ;Rajasthan Municipalities Rules; Indian Penal Code (IPC) - Sections 341; Code of Criminal Procedure (CrPC) , 1974 - Sections 156(3)

Appeal No. : S.B. Criminal Misc. Petition No. 658 of 1993

Appellant : Nijamuddln and ors.

Respondent : State of Rajasthan and anr.

Advocate for Def. : K.L. Thakur, Public Prosecutor and; Sadul Singh, Adv. for Respondent No. 2

Advocate for Pet/Ap. : J.R. Patel, Adv.

Disposition : Petition allowed

Judgement :

ORDER

B.R. Arora, J.

1. This miscellaneous petition is directed against the order dated 14-10-93, passed by the Munsif and Judicial Magistrate, First Class, Bilara (Camp Pipar City), by which the learned Magistrate took cognizance against the petitioners for the offence under Section 203 of the Rajasthan Municipalities Act and issued bailable warrant in the sum of Rs. 3000/- for procuring the presence of the ; accused-petitioner.

2. Anoop Singh filed a complaint under Section 341, I.P.C. and Sections 117 and 203 of the Rajasthan Municipalities Act against the petitioner Nijamuddin and the proprietors of Pathan Auto Service, Bus Stand, Bilara, and Kureshi Transports, Bus Stand, Bilara, in the Court of the Munsif and Judicial Magistrate, First Class, Bilara. It was alleged in the complaint that the complainant is the owner of the land bearing 'Khasra Number 1978 of Bilara Chak Number 1, which abuts on public way. An obstruction over this land was made by Nijamuddin on 4-6-81, by raising constructions of the shops measuring 14' x 26'. The construction of these two shops have been made by Nijamuddin without taking any permission from the Municipal Board and he has given one shop on rent to Pathan Auto Service, Bus Stand, Bilara, and the other shop to Kureshi Transport Company, Bus Stand, Bilara, who are in the possession of these shops. Nijamuddin has applied for conversion of this land in the office of the Additional District Magistrate (Land Conversion), Jodhpur, and the land was converted and the Patta was issued in his favour, which was challenged by the complainant in a revision petition before the Board of Revenue, Rajasthan, Ajmer. The revision petition, filed by the complainant, was allowed and the Patta, granted in favour of Nijamuddin was cancelled. Nijamuddin filed a Special Appeal before the Board of Revenue, which was, also, dismissed. He challenged the order passed by the Board of Revenue before the High Court by way of filing a writ petition and the writ petition, filed by Nijamuddin, was, also, dismissed. The petitioner was held to be trespasser by the Board of Revenue as well as by the High Court and on that basis the order under challenge was cancelled. It has, also, been averred in the complaint that in spite of the judgments against him, Nijamuddin or his tenants have not removed the obstruction on the public way and have committed a criminal trespass and,

therefore, the cognizance may be taken against them and they may be tried and after trial adequately punished. The learned Magistrate sent the complaint for investigation under Section 156(3), Cr. P.C. to the Station House Officer, Police Station, Bilara, who, after investigation, presented the final report. After the receipt of the final report, the learned Magistrate issued notice to the complainant. After the service of the notice, complainant Anoop Singh was examined as P.W. 1. Thereafter the learned Magistrate refused to take any cognizance under Section 341, I.P.C. and Section 117 of the Rajasthan Municipalities Act, as according to the learned Magistrate the ingredients of these offences were not present, but, however, he took cognizance against the petitioner for the offence under Section 203 of the Rajasthan Municipalities Act as according to the learned Magistrate the petitioner has made encroachment on the public way. The Court after taking cognizance issued bailable warrant to procure the presence of the accused-petitioners.

3. It is contended by the learned counsel for the petitioners that for the offence under Section 203 of the Rajasthan Municipalities Act, it is only the Municipal Board which can file a complaint and any individual has no locus standi to file a complaint and, therefore, the learned Magistrate committed an error in taking the cognizance against the petitioners on a complaint filed by an individual who has no locus standi to file the same. So far as the dispute between the petitioners and the complainant is concerned, that, at the best, can be said to be a civil dispute and no action can be taken against the petitioners under the Criminal Law and the petition, therefore, deserves to be dismissed and the order passed by the learned Magistrate deserves to be quashed.

4. In support of its contention, the learned counsel for the petitioners has placed reliance over : Dhanesh Gupta v. State of Rajasthan, 1992 WLC (Raj) 393 and Suresh Prasad Yadav v. S. K. Bawa, 1992 (3) Crimes 102 : (1992 Cri LJ 3192). It has, also, been contended by the learned counsel for the petitioners that with respect to removal of the I obstructions, the complainant filed a civil suit which is still pending adjudication in 'the Court of the Additional Munsif and Judicial Magistrate No. 4, Jodhpur. The petitioner, also, filed a suit for declaration, which too is pending in the Court of the learned Civil Judge, Jodhpur, and during the

pendency of | these two civil suits, the act being of a civil | nature, no criminal prosecution can be launched against the petitioner(s). Learned counsel for the complainant, on the other hand, has submitted that the right of use of public way by the petitioner has been in- fringed by the accused-petitioners by way of making an encroachment over the public way and raising constructions of two shops. As the offence of encroachment over public way amounts to criminal, trespass and is a cognizable and non-bailable offence and is punishable for an imprisonment up to three years, the complainant can file the complaint against the trespassers) who had made the encroachment and the cognizance has rightly been taken by the learned Magistrate. His further submission is that the offence is of continuing nature and the Patta granted in favour of the petitioner was cancelled and the petitioner was held as trespasser by the Board of Revenue as well as by the High Court and when the rights of the parties have already been adjudicated, the subsequent suits relating to the same dispute, are not maintainable on the basis of the principle of res judicata.

5. I have considered the submissions made by the learned counsel for the parties.

6. It is not necessary to consider and decide the other points raised by the learned counsel for the parties as the matter can be decided only on one point regarding the maintainability of the complaint filed by the private party. Section 203 of the Rajasthan Municipalities Act deals with the encroachment and obstruction upon the public land. Encroachment on a public land has been made punishable with imprisonment up to three years and with a fine up to Rs. 20,000/-by Sub-section. (1) of Section 203 and as per Sub-section. (15) of Section 203 of the Act, the burden of proving that the accused has not committed the offence under Sub-section. (1) or (2) of Section 203, lies on the person who has been prosecuted for the offence. Sub-section (19) of Section 203 of the Act provides that no investigation of the offence under this section shall be made by the Officer below the rank of Deputy Superintendent of Police. The detailed procedure has been provided in various Sub-section of Section 203 for removing the encroachment/obstruction made on a public land and certain Officers have been authorised to take action. Sub-section. (18) of Section 203 of the Act provides, that the employees of the Municipal Board who are specifically entrusted with the duty

to stop or prevent the encroachment or obstructions and if they wilfully or knowingly neglect or deliberately omits to stop or prevent such encroachment or obstruction then they are, also, liable to be prosecuted and shall be punished with imprisonment which may extend to one month or a fine which may extend to Rs. 1000/- or with both. A detailed procedure regarding confiscation, removal etc. has been provided under Section 203 of the Act. Section 265 of the Act authorises the Municipal Board to direct any prosecution for any public nuisance and for the punishment of any person offending the provisions of the Act or of any rule or the Bye-laws made there under. Thus, according to Section 265 of the Act, the power to prosecute vests in the Municipal Board and not with any of the private individual. It is only the Municipal Board which can file a complaint for the contravention of any of the provisions of the Rajasthan Municipalities Act, Rules or the Bye-laws Section 203 of the Act deals with the encroachment or obstruction made on the public land. Criminal justice is an instrument of social control and its object is to protect the society from the internal disorder or disruption. The object of the system is not only to ensure social harmony and maintaining the law and order and its enforcement but, also, to ensure equity of justice. The criminal law is not meant to be used as an instrument of wrecking personal vengeance against the person who, according to him, has caused injury to him. In such a matter, the aggrieved party is the Municipal Board, which is the) custodian of the citizen living in the municipal area and has to see that no encroachment be made on the public property and to follow the procedure provided under the provisions of the Act for the removal of the encroachment and, therefore, it is for the Municipal Board to take all necessary steps for the clearance of the obstruction or the encroachment made by an individual for bringing the person to the light who has acted in contravention of the provisions of the Act or the Rules against the interests of the residents of the Municipal are and and to file a, complaint or to take all the necessary steps but an individual cannot be allowed to file a complaint and to launch prosecution for vindicating his personal grievances and, therefore, on account of any personal grievances or for personal gains or with any oblique motive of consideration if any complaint has been filed by an individual for launching the prosecution then the same deserves to be dismissed at the threshold. The cognizance has been taken by the learned Magistrate on the

complaint filed by an individual complainant which has been maliciously instituted with an oblique motive to wreck personal vengeance against the petitioner(s). The proceedings, therefore, deserve to be quashed as being mala fide and the order dated 14-10-93, passed by the 1 learned Magistrate, taking cognizance against the petitioners, deserves to be quashed and set aside.

7. In the result, the miscellaneous petition, filed by the petitioner, is allowed and the order dated 14-10-93, passed by the Munsif and Judicial Magistrate, First Class, Bilara (Camp Pipar City) taking cognizance against the petitioners for the offence under Section 203 of the Rajasthan Municipalities Act, is quashed and set aside and the complaint, filed by the complainant, is dismissed. It will, however, be open with the Municipal Board to prosecute the petitioner(s), if it so likes, under Section 203 of the Rajasthan Municipal Act, for removal of the encroachment, if any, by way of prosecution or any other method provided under Section 203 of the Act for the removal of the encroachment or obstruction.

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