

Karni Singh and ors. Vs. Dinesh Alias Pappu and anr.

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Court : Rajasthan

Decided On : Dec-19-1990

Reported in : 1990(2)WLN573

Judge : B.R. Arora, J.

Appeal No. : S.B. Cri. Revi. Peti. No. 237 of 1986

Appellant : Karni Singh and ors.

Respondent : Dinesh Alias Pappu and anr.

Disposition : Petition dismissed

Judgement :

B.R. Arora, J.

1. This revision is directed against the order dated August 11, 1986, passed by the Additional Chief Judicial Magistrate No. 3, Jodhpur, by which the learned Magistrate has taken cognizance against the petitioners and seven other persons.

2. Complainant Dinesh alias Pappu filed a complaint in the Court of the learned Additional Chief Judicial Magistrate No. 3, Jodhpur, against the present petitioners and seven other persons Under Sections 166, 288, 323, 337, 342, 357, 394, 440, 454, 147, 148 and 149, IPC. It was alleged in the complaint that on Plot No. 17, situated near Maghrajji Ka Tanka, Mandore Road, Jodhpur, which was purchased

by his brother, who has constructed a boundary wall and two residential rooms alongwith kitchen and latrine. The accused persons came on the site and abused him and also gave beating to him. They also demolished the construction raised by him. Certain other allegations were, also, made in the complaint. The Complainant has also, filed certain documents along with the complaint. The learned Magistrate examined Dinesh, Banshi Lal, Ram Singh and Raghuveer Singh Under Section 202, Cr. PC. The learned Magistrate, after considering the complaint the documents produced by the Complainant and the statements recorded Under Section 202, Cr PC of the witnesses Dinesh, Banshi Lal, Ram Singh and Raghuveer Singh, took the cognizance against the petitioners and Deo Dutt, Sajjan Singh, Roopa Ram, Nathu Singh, Pramod Kumar, Gordhan and Binjraj Singh Under Sections 147, 323, 341, 427, 447 read with Section 149, IPC. Before taking the cognizance, the learned Magistrate also took note of the fact that the action of accused does not come in their due discharge of the official duties and therefore, the provisions of Section 197, Cr PC are not applicable. The learned Magistrate, after taking the cognizance, issued process. It is against this order that the petitioners have filed this revision petition.

3. It is contended by the learned Counsel for the petitioners that there is no legal evidence available on record to justify taking the cognizance and issuing the process by the learned Magistrate. He has further submitted that with respect to this land, notice was given to Allarakha by the Urban Improvement Trust, Jodhpur, and after notice, order for removing the encroachment was passed and thereafter in the official discharge of the duties, this action of removing the encroachment was taken. The Complainant and other persons tried to obstruct the U.I.T. staff in removing the encroachment and gave beatings to them, damaged the vehicles and, therefore, a First Information Report was lodged at the Police Station and the case was registered against these persons. It has further been submitted that the incident is alleged to have taken place on Feb. 1, 1986, while the complaint was filed in the Court on February 18, 1986. The counsel for the petitioners has also relied upon the contentions raised by the Complainant in his bail application, in which the allegation regarding treating or giving assault alleged to have been given by the petitioners is not there. In this view of the matter, counsel for the petitioner submits, the proceedings should be quashed. He has also placed

reliance over Bhappa Singh v. Rampal Singh and Ors. 1981 Cr. LR (SC) 513, Pukhraj v. Ummaid Ram 1964 R. L.W. 238 Jeewa Ram and Ors. v. Madan Lal and Ors. 1986 R.L.R. 588 Matajog Dopey v. H.C. Bhari 1956 SC 44 and Rajendra Nath Mahot T. Gangooly : 1972 CriLJ268 . The learned Counsel for the respondent-complainant, on the other hand, has submitted that the case of the petitioner's not covered by Section 197, Cr. PC as the act done by them was not in their official discharge of the duties and, therefore, they are not entitled for any protection as provided Under Section 197, Cr. PC. According to him, giving beating and demolishing the houses do not come in the official discharge of the duties. He has, also, submitted that the land of the non-petitioner is them selves, the notices were given to Allarakha and not to the Complainant. The case of the complainant is that he raised the construction after getting due permission and even the sub-division of the property was approved by the Urban Improvement Trust on October 20, 1984. He, therefore, submitted that the evidence produced by the complainant makes out a case against the petitioners and the other accused persons and the learned Magistrate has rightly taken the cognizance against them.

4. I have considered the rival submissions raised by the counsel for the parties.

5. At the time of taking the cognizance, the Court, after application of the mind to the evidence of the witnesses and the documents on record as also to the suspected conditions of the offence, has to satisfy it self that a prima facie case is made out to proceed with against the persons accused. At this stage, the evidence is not required to be meticulously examined as required to be examined at the final stage & if there is prima facie evidence to proceed-with, then the Court can take the cognizance has been taken, has any valid defence available to him, then that can be decided by the appropriate forum at the appropriate stage. As the order, taking cognizance, is an ex-parte order, passed by the learned Magistrate, without giving any opportunity of hearing to the accused, therefore, if the accused have any grievance against the order passed by the Judicial Magistrate, they can appear before the learned Magistrate and raise all objections which they want to raise and it is expected that the learned Magistrate will consider all those objections raised by the petitioners.

6. Consequently, the revision petition Under Section 397, Cr.PC, filed by the petitioners, is dismissed.

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