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Court : Rajasthan

Decided On : Feb-19-1990

Reported in : 1990(1)WLN616

Judge : N.C. Sharma, J.

Appeal No. : S.B. Cr. Revision No. 381 of 1982

Appellant : Bhurmal

Respondent : Surajmal and ors.

Disposition : Appeal dismissed

Judgement :

M.B. Sharma, J.

1. This is appeal by Bhurmal, by leave from this Court, against the judgment of the Special Magistrate, Alwar dated June 14, 1982 whereby the respondents were acquitted for the offence Under Section 4/7 of the Protection of Civil Rights Act and Sections 323 and 504, IPC.

2. Facts leading to the filing to this appeal are that on September, 1 1980, the appellant had filed a private criminal complaint against the respondents alleging that on a day prior at about 4 p.m., the mother of the complainant named Mst. Mamli had gone to draw water Khatiwala well situated in village Siwana, District

Alwar. It was stated that while Mst. Mamli was drawing water from the said well, the respondents armed with lathies and Jellies formed an unlawful assembly and obstructed Mst. Mamli from drawing water from the said well on the ground that she was 'Jatiya' by caste and an untouchable. Mst. Mamli protested as she had been drawing water from this well from before and insisted that she would draw the water on that day also. Thereupon, respondents broke the pitcher with Mst. Mamli on her head, dragged her down the wall, assaulted by slaps and did not allow her to take water from the well. The respondents told that they would not allow an untouchable to draw the water from the above well. 6 complainant along with her mother, went to Police Station to lodge a First Information Report but the respondents were already there and the police did not accept the report from the complainant. Upon these, allegations, the complainant asserted that the respondents had committed offence Under Section 3 of the Protection of Civil Rights Act and Under Sections 324 and 504, IPC.

3. The case was tried by the Special Judicial Magistrate and after trial, the said Magistrate found that Mst. Mamli had not sustained any injury She had also admitted that previously the respondents had not obstructed her from drawing water from the said well. It was also apparent that litigation was also going on in between the parties. The witnesses examined on behalf of the complainant belonged to his family. Keeping all these in view, the Special Magistrate felt that the allegations made by the appellant against respondents were vague and he acquitted the latter of the offence.

4. I have heard learned Counsels for the parties and have gone through the evidence adduced during the course of trial. It may be stated at the very outset that the complainant case forward with a bold assertions that the respondents were armed with lathies and jellies and they formed as unlawful and assembly and obstructed Mst. Mamli from drawing water. It is also stated that not only the pitcher was broken, but Mst. Mamli was also beaten by fists and slaps. It is difficult to understand that the persons holding lathies and jellies in their bands and numbering 7 did not inflict a single injury by any of these weapons, on the person of Mst. Mamli. Since admittedly Mst. Mamli did not sustain any injury, lathies and jellies were made more blunter than they were and instead of them fists and slaps

were activated. This fact by itself makes it clear that the complaint was wholly malafide. Reasons are obvious. There have been chequered litigations between the complainant and respondents side. Respondents have produced certain documentary evidence in this regard. One of such documentary evidence is that a criminal complaint had been filed by the brother of the present complainant against the respondents and in the complaint the respondent and in this complaint, the subject matter was some agricultural land and it was alleged that the present respondents, came armed to dispossess Manchand. The incident in that criminal case was alleged to be of July 5, 1989 and the criminal complaint was filed on July 26, 1989. This criminal complaint was sent to the police station for investigation. A final report was submitted by the police on July 31, 1980. Ultimately the complaint was dismissed. Apart from that, proceedings Under Sections 116(3) and 151, Cr.PC were also initiated. That shows that sons of Prabharilal, namely, the present complainant Bhurmal and Manchand, another son of Prabhatilal, were engaged in criminal litigation with the respondents. This private criminal complaint is actually an out-come of the pre-existing rivalry between the parties. Therefore, the evidence adduced in the case has to be judged keeping this strained relationship in view. Pyarelal PW 2 exposed himself to be false in as much as that he tried even to conceal his relationship with Prabhatilal, father of the complainant. In one part of the statement, he stated that Prabhatilal and Kana were not real brothers, but latter on he had to admit that they were really brothers. It was also admitted that there were two localities of Harijans in the village and in both the localities there were separate wells. Normally one would always go to draw water from nearby well than from a distant well. It has already been mentioned that the entire theory of beating by respondents to Mst. Mamli is a false and I am of the view that this is yet another frivolous criminal litigation which was lodged by the complainant as against the respondents. The learned Counsel for the appellants has relied upon Section 12 of the Protection of Civil Rights Act and he urged that the Court should presume that the act committed by the respondent was on the ground of untouchability. That presumption only arises when an act constituting an offence under the Act was committed. When the commission of the act itself is not established, the respondent were rightly acquitted.

6. This appeal has no merit in it and it is hereby dismissed.

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