Fateh Singh Vs. Emperor

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Court : Kolkata

Decided On : May-21-1913

Reported in : AIR1914Cal286,(1914)ILR41Cal43

Judge : Imam and ;Chapman, JJ.

Appellant : Fateh Singh

Respondent : Emperor

Judgement :

Imam and Chapman, JJ.

1. This rule was issued on the ground that the Sessions Judge having found that peaceful possession of the lands had been given to the petitioners' malik by the Civil Court and that the malik's men commenced ploughing the field first, it should have been held that the petitioners were in the lawful exercise of their rights over their property and, consequently, had the right of private defence.

2. The petitioners have been convicted of the offences of rioting and constructively of grievous hurt under Sections 147 and 325 read with Section 149 of the Indian Penal Code, and sentenced to rigorous imprisonment for six months each under each of the counts. They have farther been bound down to keep the peace, tinder Section 106 of the Criminal Procedure Code, for a period of two years after release.

3. The facts that gave rise to this case may be shortly considered. Rai Bahadur Harihar Prosad Singh of Dumraon is the malik of the village of Kurmichak, where this occurrence is said to have taken place. He purchased this village three years ago, and with it a number of decrees for rent that were outstanding against the tenants. One of these decrees was against Ram Ratan Mahton, who is one of the complainants in this case. In execution of this decree, Ram Ratan's holding was sold by the Court and purchased by Rai Bahadur Harihar Prosad Singh on the 27th February 1911. The judgment-debtor, on 17th March, applied for a chalan to deposit the money, but no money was deposited. On the 21st, March 1911 a petition of satisfaction was filed on behalf of the decree-holder with a prayer that the sale might be set aside, but it could not be set aside inasmuch as the money was said to have been paid on the expiry of 30 days after the sale. The sale was, therefore, confirmed, and the application for setting it aside was dismissed. A year later, that is, on the 15th April 1912, the decree-holder applied for, and obtained, a delivery of possession in respect of the holding that he had purchased, it being his case that the petition of satisfaction had been filed on certain misrepresentations by the tenant, who in fact had not paid the money that was due. On the 19th April the judgment-debtor filed an objection against the delivery that had already been made, and that objection at the time of this occurrence, as also at the time that this matter was heard in appeal by the Judge, was yet pending decision.

4. This occurrence is said to have taken place on the 25th June 1912, and it is alleged that between the delivery and the day of occurrence nothing was done by either party to the land. It stands to reason that nothing could be done during that period inasmuch as the agricultural season in Bihar did not commence till about the time of the alleged occurrence, and that during the period from the l5th April to about the, 25th June the land would naturally be allowed to remain fallow to befit it for cultivation. The fact that nothing was done during that period by the malik on the land does not affect his possession of it. On the 25th June 1912 the petitioners representing the malik, namely, Rai Bahadur Harihar Prosad, went to this land with their ploughs, accompanied by 40 to 50 people. After the arrival of the petitioners and their men on the land, and after the ploughing had been commenced a large body of, men on the side of Ram Ratan and Ram Autar, the other complainant, numbering about 80 to 100, came to this field to attack the petitioners, and a

general fight between the two parties began, resulting in one man on the side of the malik being killed, and some being seriously wounded, and a couple of men on the side of the tenants being wounded, the most serious injury on the side of the tenants being a broken arm.

5. The learned Judge has come to the conclusion that the men on the side of the malik were worsted and fled, while those on the side of the tenants remained in occupation of the place by reason of the superiority of their numbers. On these facts the petitioners have been convicted of the offences we have already mentioned.

6. The question we have to decide in this case is whether, on these facts, an offence under Section 147 is made out against the petitioners. The learned Judge seems to think that the delivery of possession was a matter of doubtful legality. That subject is yet pending decision, and we have no desire to express any opinion on the question in this case; but we take it from the learned Judge's conclusions that he does not doubt the effect of the delivery, though subsequently in the proceedings it may be held to have been improperly obtained. We are not concerned with the question whether the delivery of possession was improperly obtained or otherwise. We have to see whether the delivery of possession obtained on the l5th April 1912 did or did not give, as a matter of fact, possession to the petitioners' master, and whether, acting under the delivery, the petitioners' master was or was not entitled to go on the land, not with a view to interfere with another's right, but to maintain a right which had been given him by a Court of competent jurisdiction. There seems to us to have been no justification for the tenants to go upon this land so long as the petitioners' maik had the delivery of possession in his favour. A delivery not merely gives possession to a party, but also connotes a permission to that party to utilize the subject of the delivery of possession in any lawful manner he chooses. One of the lawful ways of enjoyment of land over which possession has been given to a party is that he may go on the land, till it, grow and harvest the crops and enjoy the produce. In this case we see in the conduct of the petitioners nothing to warrant the conclusion that they were acting contrary to law, nor can it be said that they were engaged in enforcing a right. There is a considerable distinction between enforcing a right and maintaining

a right. People engaged in the exercise of a lawful right of which they are in enjoyment cannot be said to be enforcing a right. These people, the petitioners, were merely maintaining a right, or, in other words, enjoying a right of which they had been given possession by a Court of competent jurisdiction; on the other hand, the conduct of the tenants amounts to a defiance of constituted authority. Under these circumstances, the petitioners were justified in repelling the attack upon them by persons who had no right to obstruct them and they cannot be held to have been guilty of rioting.

7. Next we consider their conviction under Section 325 read with Section 149. It is quite obvious that if the case of rioting fails, their conviction for the offence of hurt must also fail in as much as that is a conviction by implication only. There is nothing in this case to show that even if there were a charge against individual petitioners of causing hurt, they had exceeded the right of private defence. We are inclined to hold that the case of Pachkauri v. Queen-Empress (1897) I.L.R. 24. Calc. 686 has the fullest application to the circumstances of this case. With these remarks, we make the rule absolute, and set aside the conviction and sentences under both the Sections 147 and 325 read with 149, the result of which, of course, will be that the order under Section 106 must also fail. The petitioners will be at once released from jail.