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Court : Himachal Pradesh

Decided On : Apr-25-1972

Reported in : 1972CriLJ1093

Judge : D.B. Lal, J.

Appellant : Paras Ram

Respondent : State

Judgement :
ORDER

D.B. Lal, J.

1. This revision has been presented against the judgment dated 30th June 1971, of the Sessions Judge Mandi in a case under Sections 447 and 448 of the Indian Penal Code whereby agreeing with the findings of the Magistrate First Class Sundernagar he has convicted the petitioner Paras Ram and has sentenced him to fine of Rs. 100/- in default simple imprisonment for a term of one month under Section 447 and to a fine of Rs. 200/- in default simple imprisonment for a term of two months under Section 448. Besides making this order of conviction, the learned Sessions Judge also confirmed the findings of the learned Magistrate under Section 522 of the Code of Criminal Procedure whereby the complainants have been restored possession of the land and building which were the subjectmatter of the dispute. The petitioner-accused Paras Ram was proceeded

against, upon allegations that on 1st May, 1966, he broke open the lock of a room meant for a school which was constructed by the local panchayat the construction having been completed on 30th April. 1966. It was further stated that Paras Ram accused along with three others also forcibly occupied Government land measuring 3-5-6 Bighas adjoining that room. He constructed his own cattle-shed over a part of this land and he also cultivated the remaining part and raised his own crops. On these allegations, the case was instituted against Paras Bam and three others under Sections 447 and 448 of the Indian Penal Code.

2. The learned Magistrate found that the two offences were brought home to the accused Paras Ram alone and, therefore he convicted and sentenced him in the manner stated above. Simultaneously, an order was also made under Section 522 of the Cri. P.C. restoring possession of this school building as well as the open site to the local Panchayat. The accused Paras Bam came in appeal before the Sessions Judge Mandi but could not succeed and his conviction and sentence were maintained. Similarly, the order of restoration of the property under Section 522 of the Criminal P.C. was also confirmed. He felt aggrieved of the decision and has come up in this revision.

3. Ordinarily in a criminal revision the High Court is chary to interfere with the concurrent findings of fact, but in this case the mistake which seems to have been committed is that entirely wrong inferences have been drawn upon proved facts and circumstances. This would naturally call for interference by the High Court and from the circumstances which I shall present relate, it would be abundantly clear that no offence could be made out under Sections 447 and 448 of the Indian Penal Code.

4. The offence of criminal trespass under Section 441 necessarily constitutes some distinctive elements, namely, the entry by the accused into or upon property, such property being in possession of another and the intention while making entry to commit an offence or to intimidate insult or annoy the person in possession of the property. In the present case there is no apparent dispute regarding the entry by the accused and the possession which the local Panchayat might have had over the land and the building. The dispute is regarding the intention with which

the accused effected entry upon the land and the building. In every case where the impugned entry causes annoyance or insult, it cannot be said to be actuated by the intention to cause the said result. The distinction between the knowledge and intention is Quite clear, and that distinction must be borne in mind in deciding whether or not in a particular case the accused were actuated by the requisite intention. The said intention is always to be gathered from the circumstances of the case and it may be that the necessary or inevitable consequence of the impugned act may be one relevant circumstance. Both the Courts have apparently fallen into error of inferring intention of the accused from the knowledge which he may have had at that time that his action would cause intimidation, insult or annoyance to the local Panchavat. In fact the circumstances were established whereby the accused could be stated to have made a bona fide claim of right for the land and the building. If a person enters on land in the possession of another in the exercise of a bona fide claim of right but without any intention to intimidate, insult or annoy the person in possession, or to commit an offence, then although he may have no right to the land he cannot be convicted of criminal trespass, because the entry was not made with any such intent as constitutes the offence. Claim of right if bona fide will always give protection howsoever ill-founded in law such claim may be. Bona fide claim of right or title necessarily implies that there may not be a completeness attached to such right or title. If one possesses actual right or title there can in fact be no occasion of his having a bona fide claim of such right or title because a claim of right or title necessarily implies a contest of right or title between the claimant and another. Therefore, it would be futile exercise to know as to whether the accused had proved his right or title for the property. If in the circumstances which go to make up the intention on the part of the accused a bona fide claim to property by assertion of his title is proved he would be protected and if he enters upon the property he does not commit criminal trespass. In the present case the accused seems to have bona fide believed that the title of the land and building vested in him and that is why he made the entry. For this the accused was not called upon to prove his defence similarly as the prosecution was supposed to prove the offence against him. The burden of proof was all along with the prosecution and the entire evidence should have been considered from this angle.

5. In the instant case what has been proved is that the accused asserted his title for the property at every relevant stage, There was a house of the accused on this very site from before; That house was burnt by the people who belong to that Panchavat. The accused started a case under Section 436 of the Indian Penal Code against such persons at one occasion before also the accused made an attempt to take into possession the land and the building and for which also some case had started against him. The prosecution failed to procure any document which might go to prove the title of the local Panchavat. The revenue entries were never procured and the existing entries did not prove the title of the local Panchayat All these circumstances decidedly indicated that the accused could lay a bona fide claim for the property. The defence witnesses came to state that the accused had constructed the building and it was admitted that the cattle-shed of the accused is already existing on a portion of the land. The two Courts below have not discussed the defence witnesses. Similarly they have not taken heed to all these circumstances which go to make up the intention of the accused which he had while taking possession of the property.

6. Rup Singh P. W. 1, Puran Chand P. W. 2 and Mohan Lal P. W. 7 stated about the burning of the prior house of the accused for which the criminal case was pending. Puran Chand P. W, 2 and Mohan Lal P. W. 7 both stated that the said house of the accused had existed on this very site. Mohan Lal P. W. 7 further stated that the local Panchayat constructed a room and utilized the material of the fallen house of the accused. Rup Chand P. W. 3 however pretended ignorance of that case which had started in the Court of the Sessions Judge for the burning of the house. Rup Singh P. W. 1 stated that at one occasion before also the accused had entered over this land and for which a case had started. Puran Chand (P. W. 2 stated that the local Panchayat did not take legal possession over this land The Patwari was never called up to point out the boundaries. It was a vacant plot and the department constructed a room over it. It is, therefore, clear that after the burning of the house that belonged to the accused the land was lying vacant and the local Panchayat somehow entered into possession and constructed the room. They even utilized the very same material which belonged to the accused. Ghamanda Head Constable P. W. 8 who was the investigating officer clearly stated that he never cared to see the revenue papers nor did he ascertain as to

whether the open site really belonged to the accused. Mohan Lal P. W. 7 also stated that a cattle-shed of the accused is already standing over a part of the land. Nearly every prosecution witness stated that the accused asserts title for the land and the building and says that these belong to him and that he has made the construction. Kanihya Pardhan P. W. 4 stated that whenever he asked the accused to vacate he always asserted title and said that he would not leave the place. Similarly stated Dilwar P. W. 5 who is a school teacher in that verv school. The two defence witnesses namely, Lakhu D. W. 1 and Bownu D. W. 2 both stated that the previous house of the accused was constructed by them and the said house was burnt by the village people. All this evidence sufficiently indicated that the accused was previously the owner of the house that it was burnt by the local people and that the present room has been constructed by the material left by the accused. The land was lying vacant and no documents of title existed in favour of the local Panchayat. It seems that they found it lying vacant and constructed the room which the accused occupied the very next day. The intention of the accused was thus not to commit an offence or to intimidate, insult or annoy any person but to assert his title which he could bona fide claim for the land and the building.

7. For the offence under Section 447 of the Indian Penal Code, the law is now settled by the Supreme Court in Mathuri v. State of Puniab : [1964]5SCR916 followed in Rash Behari Chatterjee v. Fagu Shaw : 1970 CriLJ4 . The following observation of Dass Gupta. J. gives the dictum of the Court:

The correct position in law may in our opinion be stated thus: In order to establish that the entry on the property was with the intent to annoy intimidate or insult, it is necessary for the Court to be satisfied that causing such annoyance, intimidation or insult was the aim of the entry; that it is not sufficient for that purpose to show merely that the natural consequence of the entry was likely to be annoyance intimidation or insult and that this likely consequence was known to the person entering: that in deciding whether the aim of the entry was the causing of such annoyance intimidation or insult, the Court has to consider all the relevant circumstances including the presence of knowledge that its natural consequences would be such annoyance, intimidation or insult and including also the probability of something also than the causing of such intimidation, insult or annoyance being

the dominant intention which prompted the entry.

Therefore, the aim with which the accused made the entry was material. To my mind the aim was to take possession of his own property His aim was never to commit an offence or intimidate, insult or annoy any person.

8. It was stated that the accused did not take up any such specific plea in his defence but that could not be the deciding factor, when the evidence adduced by the prosecution itself revealed circumstances which clothed the accused with the defence of raising a bona fide claim of right for the property. In the circumstances the mere prior possession of the local Panchayat or entry made by the accused were not sufficient Further the necessary intention was required to be proved and this could not be proved on the very basis of the facts and circumstances sought to be proved by the two Courts below.

9. I must, therefore, hold that the offence of criminal trespass under Section 441 was not proved and, therefore the consequential offences under Sections 447 and 448 of the Indian Penal Code too were not proved. The accused should have been acquitted of the two charges. Since the offence itself was not proved against the accused no order could be made under Section 522 of the Criminal Procedure Code.

10. In the result the revision is allowed and the conviction and sentence of Paras Ram petitioner-accused under Sections 447 and 448 of the Indian Penal Code are set aside. Similarly, the order made against the petitioner-accused under Section 522 of the Criminal P.C. is also set aside.

11. If the petitioner-accused has paid the amounts of fine, the same shall be refunded.

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