

Dhani Ram Vs. State

Dhani Ram Vs. State

SooperKanoon Citation : sooperkanoon.com/898518

Court : Jammu and Kashmir

Decided On : May-21-1975

Reported in : 1976CriLJ152

Judge : Mufti, J.

Appellant : Dhani Ram

Respondent : State

Judgement :

ORDER

Mufti, J.

1. This is a revision petition by the accused who was convicted by the trial Court of Munsiff, Judicial Magistrate 1st Class, Jammu, under Section 447, R. P. C- and sentenced to undergo rigorous imprisonment for one month and pay a fine of Rs. 100/-- In default of payment of fine he was required to undergo further 15 days' rigorous imprisonment. The accused went in appeal to the Sessions Court. The appeal was heard by the Additional Sessions Judge, Jammu, who maintained the conviction and the sentence imposed on the accused and dismissed the appeal.

2. The prosecution case was that On 19-3-1970 the accused forcibly entered upon the land under survey Nos. 722/727 situated in village Gool, Tehsil Jammu in the possession of Dev Asthan Bawa Sei Nath and started ploughing the same to the

exclusion of Dev Asthan. Their further case was that Dev Asthan had entered into possession in March 1965 in pursuance of the orders of Munsiff, Jammu, and had ever since continued in possession till it was dispossessed by the accused on the aforesaid date. The defence case was that the land was originally in the possession of Sant Ram, uncle of the accused, and after him in the possession of the accused himself right from the year 1947. The trial Court and so also the appellate Court confirmed the case of the prosecution and negatived that set up by the accused-

3. The case under Section 247, R. P. C. originated upon a report Ex. A which was lodged with the police by Mr Amir Chand, president of Dev Asthan on 21-3-1970. Alongside Mr. Amir Chand filed an application under Section 145, Criminal P.C. on 27-3-1970 on identical allegations which was heard by the City Magistrate, Jammu. On consideration of the affidavits and related evidence the learned City Magistrate came to the conclusion that the applicant was in peaceful possession of the disputed land when on 19-3-1970 the non-applicant forcibly occupied the same and brought it under cultivation on account of which there was danger of breach of peace on spot. On this finding, by his order dated 22-10-1970, the learned City Magistrate, declared the applicant to be in possession within two months next before the date of the Preliminary order viz. 30-4-1970 and forbade the non-applicant from disturbing his possession, unless evicted in due course. It seems that the non-applicant did not choose to agitate this matter further and as such the order made by the learned Magistrate has become final.

4. It is unfortunate and, surprising too, that the two cases, based as they were on the same occurrence, should have been allowed to be heard and determined by two different Courts, particularly so, when they raised a common question whether or not the accused had trespassed upon the land on 19-3-1970. Be that as it may, the principal question before me is whether or not the Courts below have justifiably found the accused guilty of the offence under Section 447, R. P.C. On evidence both the Courts below have held that the land in question continued to be in the possession of Dev Asthan from the year 1965 until it was dispossessed by the forcible occupation and cultivation of the land by the accused on 19-3-1970. In coming to this conclusion the trial Court was influenced by the statement of Durga

Dass P.W. and the entries in the revenue record, as may be gathered from the following observations made by the trial Court in the penultimate paragraph of its judgment:

So by corroboration of the statement of Durga Dass and the revenue record it is proved that the complainant was in possession of the suit property on the day of occurrence and the accused committed a criminal trespass in order to annoy the complainant.

The learned Additional Sessions judge has endorsed) this conclusion of the trial Court relying upon the statement of Amir Chand complainant, entries in the revenue record and the order made by City Magistrate Jammu under Section 145, Criminal P.C.

5. Ordinarily, this Court would not and does not, while sitting in revision in a criminal case, interfere with the concurrent findings of the Courts below on a question of fact but where the finding is vitiated so as to cause miscarriage of justice as, for instance, when it is based on no evidence or where vital evidence has been overlooked or evidence has not been considered in its true perspective the Court will and must interfere. The same principle was stated by their Lordships of the Madras High Court in AIR 1960 Mad 115 : 1960 Cri LJ 354 (2)) Mad in these words:

The High Court could and does interfere in criminal revision, even upon findings of fact, and even though they may be concurrent findings of two Courts below, where the conscience of the Court is satisfied that, in the broad interests of justice, the conviction is not sustainable; and where; as in this case, the conviction is not sustainable in certain respects, because vital evidence has been overlooked, or has not been given due consideration.

6. In the instant case the case of the prosecution was that the complainant Dev Asthan obtained possession in the year 1965 in execution proceedings upon a decree granted by the Court of City Munsiff Jammu and continued in possession thereafter till the date of occurrence. The prosecution has not cared to examine the person who delivered the possession nor also given any reason for its

inability to produce him. He was the best person to depose to the fact whether it was actual possession or symbolic possession alone which was delivered to Dev Asthan. The oral evidence produced by the prosecution is by no means consistent to show that actual physical possession was delivered to the Dev Asthan. Durga Dass and Surai Prakash P.W.'s state that Dev Asthan entered into possession of the land through Dr. Amir Ghand, its President, who ploughed the land in token of having entered into actual physical possession. Himself Mr. Amir Chand does not say so- He baldly states that Dev Asthan obtained possession through Court. On the other hand Peenja Chowkidar P.W. categorically stated that the accused never parted with possession and even when Jandial Baradari representing the Dev Asthan came to obtain the possession of the land, the accused had already brought it under plough and grown maize and vegetables over it. He even adds that the accused was not present when the Jandial Baradari came to get possession. The trial Court has excluded the statement of Peenja Chowkidar with a cryptic observation that his statement is self-contradictory without spelling out what those contradictions and how they could be considered material contradictions. I have gone through the statement. I see no contradiction worth noticing. The Additional Sessions Judge, Jammu does not even make a mention of the deposition of Peenja Chowkidar. much less offer his comments on the same. He has relied on the statement of Dr. Amir Chand which, as already stated, nowhere suggests that actual physical possession was delivered to Dev Asthan. On oral evidence, therefore, there was no good ground for the Courts below to hold that Dev Asthan entered into actual physical possession in the year 1965. All that could be reasonably said was that the possession delivered to the Dev Asthan was merely symbolic. It is also nowhere suggested in the evidence that Dev Asthan entered upon the land and brought it under plough at any time after the year 1965. In fact the suggestion is to the contrary. Dr. Amir Chand himself states that the land had remained vacant for the last five years, or putting it differently ever since the possession was obtained by Dev Asthan. Both the Courts below have overlooked this aspect of the evidence. The sheet anchor of their judgments is the Khasra Girdawari Exp. B testified to by the patwari Ramnath. In the circumstances stated above, the entries in the Khasra Girdawari. even if they favoured the prosecution, could not mean much, however, the entries do not

favour the prosecution, if examined properly. Actually, Khasra Girdawari Exp. B pertains to the years 1969 and 1970. The entry for the year 1970 expressly names the accused as to the person in cultivating possession of the land. For the year 1968 the land is shown to be vacant and the entry in the column of tenants reads thus : (Original in Urdu, omitted in this report-Ed.)

Viewed on its terms, the entry suggests that the land was actually held by Sant Ram, uncle of the accused, and constructively by Dr, Amir Chand on behalf of Dev Asthan. Ex facie, therefore, the entry did not help the prosecution or advance its case in any manner. The Courts below could not appreciate it because they did not care to dive deep into the matter. Like a machine they tried to draw a sketch of the entries and the related statement of Patwari on their minds and never cared to consider or judge their true import and meaning. In this background, their conclusion, based on oral evidence and revenue record, that Dev Asthan was in actual physical possession of the land in question immediately before the date of occurrence, in which hinged the conviction of the accused, is vitiated on the ground that they have overlooked important aspects of such evidence and record and, in no less measure, other related circumstances having bearing on the case.

7. The additional circumstance relied upon by the learned- Additional Sessions Judge Jammu is based on the judgment of the City Magistrate Jammu under Section 145, Criminal P.C. The learned Additional Sessions Judge has observed that 'the decision in that application also supports the case of the prosecution that without any right the accused took the possession of the land in question.' The learned City Magistrate may have decided the Question of possession in the proceedings under Section 145, Criminal P.C. but that could not clinch the matter in the parallel case under Section 447, R. P.C. on that question. The action of a Criminal Court in disputes under Section 145, Criminal P- C. is summary and merely a stop-gap. Its orders are meant only to ensure peace till the dispute is decided by a competent Court. On the other hand the action of a Criminal Court trying an offence under Section 447. R. P. C constitutes a regular trial with the potentiality of depriving the accused of his liberty. Accordingly the Court must naturally insist on a strict proof as regards the question of the disputed actual physical possession when it is trying an offence under Section 447, R. P.C. than

when it is making an enquiry under Section 145, Criminal P. C- The finding given' on the question of possession in proceedings under Section 145. Criminal P. C cannot, therefore, be treated as conclusive and binding on the Court try in if the offence under Section 447, R. P.C. even ii the two cases are based on the same occurrence. The Court trying the offence must come to its own conclusion the material placed before it. It may be relevant for such Court to consider the order made under Section 145, Criminal P.C. but, without anything else, as in the present case no conviction can be justifiably founded; upon such order or the findings related to it.

8. For these reasons I am of the opinion that the charge under Section 447, R. P.C. was not brought home to the accused-petitioner beyond any reasonable doubt. I therefore allow this (petition: set aside the conviction and, sentence imposed upon him; and. acquit him of the charge.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com