
(1991) 04 BOM CK 0033
In the Bombay High Court
Case No : Criminal Appeal No. 641 of 1983

Anoop Krishan Sharma

APPELLANT

Vs

The State of Maharashtra and another

RESPONDENT

Date of Decision : 05-04-1991

Acts Referred:

Penal Code, 1860 (IPC) — Section 114, 342, 95

Citation : (1991) 2 BomCR 560 : (1992) CriLJ 1861 : (1991) 2 MhLj 1028 : (1991) MhLj 1028

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : T.R. Talpade, for the Appellant; C.M. Kothari, Additional Public Prosecutor, for the Respondent

Judgement

1. This is an appeal preferred by the original Complainant, one Anoop Krishan Sharma, who had filed a private complaint numbered as Case No. 40/S of 1982 before the Metropolitan Magistrate, 43rd Court, Borivli, Bombay. The 2nd Respondent to this Criminal Appeal was original Accused No. 1. Original Accused No. 2, who is supposedly an employee of original Accused No. 1, was not available at the time of the trial. The learned Trial Magistrate, by his judgment dated 24-6-1983, acquitted Accused No. 1, who had been charged with having committed an offence of wrongful restraint u/S. 342 read with S. 114 of the Indian Penal Code. This proceeding arose out of a private complaint and leave has been granted by this Court to file the present appeal, to the original complainant. The State of Maharashtra is only a formal party in so far as the prosecution before the Trial Court was not at the instance of the State. At the hearing today, neither the original complainant, who is the Appellant before me, nor his learned advocate, nor for that matter original Accused No. 1, who is present Respondent No. 2, nor his learned advocate have appeared. With the assistance of the learned Additional Public Prosecutor, Mr. Kothari, I have gone through the record as also the judgment of the learned Trial Magistrate.

2. Mr. Kothari, the learned Additional Public Prosecutor, submitted that the learned Trial Magistrate has adopted a rather far-fetched reasoning and the grounds on which he has acquitted Accused No. 1 are wholly unsustainable. Mr. Kothari is to some extent right in so far as the learned Trial Magistrate has basically ignored the material parts of the evidence and it appears from the tenor of the judgment that he was of the view that the whole case is frivolous and deserves to be disposed of rather lightly.

3. A perusal of the record will indicate that the Appellant and Respondent No. 2 are related to each other. The record also indicates that a certain amount of hostility had come up because of certain transactions relating to two companies with which the respective Accused were connected. In the course of these disputes, which related to transfer of shares and also related to the appointment of director and removal etc. certain litigation had also erupted and it was quite obvious that the relationship between the parties was extremely strained on the date when the incident in question took place.

4. It is alleged that on the morning of 17-6-1979, the Complainant and two others, who had gone to the factory, were locked inside the factory by pulling down the rolling shutter and were not allowed to come out. This act is attributed to original Accused No. 2 who was an employee of Accused No. 1. At that time, Accused No. 1 was not there and it is alleged that even after he came and even after the Complainant's wife and her advocate arrived on the scene that Accused No. 1 refused to open the rolling shutter on the pretext that the Complainant was a trespasser, who should not have entered the premises by virtue of the Civil Court's order. Accused No. 1 is further alleged to have stated that under the Government orders due to power cut, the factory could not be opened for another three days and nothing could be done in the matter. Some commotion appears to have taken place, after which the complainant and others were able to come out of that place. Mr. Kothari has, on the basis of this evidence, submitted that the necessary ingredients for an offence punishable u/S. 342 of the Indian Penal Code have been made out and that regardless of how lenient view the Court takes that the order of acquittal was wrong. There is substance in the arguments advanced by Mr. Kothari, but there is also another aspect of the matter which needs to be taken into account. The incident is of the year 1979, and it appears that hostility still persisted in the year 1983 when, after the order of acquittal was passed, the complainant carried the matter forward to this Court. From the non-appearance of the parties and their respective advocates at this point of time, it is obvious that neither of them is interested in the present litigation. That, however, may not be a good enough ground to dispose of this appeal. On a consideration of the facts of this case, I am of the view that this case is clearly covered by S. 95 of the Indian Penal Code. To my mind, it is not merely the fact that technical requirements of the offences are complied with, but it also will have to be seen as to how serious and to what extent the harm and injury had occurred. In the present case, admittedly, the complainant and others came out of the place within a very short time and under these

circumstances to permit a litigation either in the Trial Court or in this Court or to convict a person on the basis of such minimal harm would be, to my mind, a travesty of justice. In this view of the matter though as is pointed out by the learned Additional Public Prosecutor on a very strict technicality the necessary ingredients of a conviction are present, I do not propose to reverse the order of the learned Magistrate for the reasons indicated by me, namely, that this is a case where S. 95 of the Indian Penal Code would apply.

5. In the result, the appeal fails and stands dismissed.

6. Appeal dismissed.