
(2012) 08 JH CK 0183

In the Jharkhand High Court

Case No : Criminal Revision No. 893 of 2003

Bablu Marandi and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 23-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 144, 353, 379

Citation : (2012) 4 JLJR 353

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : Nityanand Pd. Choudhary, for the Appellant;

Final Decision : Allowed

Judgement

H.C. Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the State. Petitioners are aggrieved by the judgment dated 14.7.2003 passed by the learned 3rd Additional Sessions Judge, F.T.C., Jamtara, in Cr. Appeal Nos. 57 of 1999/2 of 2003, whereby the appeal filed against the judgment of conviction and order of sentence dated 7.6.99 passed by Sri P.N. Singh, learned Judicial Magistrate, 1st Class, Jamtara, in G.R. Case No. 639 of 1994/T.R. No. 133 of 1999, has been allowed only in part by the Appellate Court below. It may be stated that the learned Trial Court had found the appellants guilty and had convicted them for the offences under Sections 144, 379, 353 of the Indian Penal Code and upon hearing on the point of sentence, sentenced them to undergo R.I. for eight months for the offence u/s 144 I.P.C., R.I. for eight months for the offence u/s 353 of the I.P.C. and R.I. for one year for the offence u/s 379 I.P.C. and the sentences were ordered to run concurrently. The Appellate Court below has acquitted the accused petitioners from the charge u/s 379 of the I.P.C., but has upheld their conviction for the offences under Sections 353 and 144 of the I.P.C. Learned Appellate Court below has also been given the benefit of the Probation of Offenders Act to the petitioners and has directed them to enter into the probation bonds of Rs. 2,000/- each alongwith one surety of the like amount

for keeping peace and maintaining good behavior for a period of one year.

2. From perusal of the record, it appears that the petitioners were made accused in Kundahit P.S. Case No. 120 of 1994, corresponding to G.R. No. 639 of 1994, wherein there is allegation against the named accused petitioners as well as about 150 unknown persons to have formed unlawful assembly variously armed, and to have harvested the paddy crops from the lands in question using force, on which the informant Hawaldar Shivjee Tiwary was deputed for protection. It appears that upon investigation, the police submitted the charge-sheet against the petitioners and ultimately charge was framed against the petitioners by the Trial Court below for the offences under Sections 144, 341, 342, 353 and 379 of the IPC and upon the accused petitioners' pleading not guilty and claiming to be tried, they were put to trial.

3. Lower Court Record shows that five witnesses were examined on behalf of the prosecution, but the informant and the I.O. were not examined. The Trial Court on the basis of the evidence brought on record, convicted and sentenced the accused petitioners for the offence under Sections 144, 379 and 353 IPC, as aforementioned.

4. From perusal of the Appellate Court judgment, it is apparent that the case of the prosecution was that the lands in question were attached in a proceeding u/s 145 of the Cr. P.C., and a receiver was also appointed. It appears that though five witnesses were examined, but it is apparent that the informant and the I.O. have not been examined in this case. It further appears that the prosecution had, not proved any document to show that there was any proceeding with respect to the lands in question u/s 145 of the Cr. P.C., or that the said lands were ever attached or any receiver was appointed. It further appears from the Appellate Court judgment that the petitioners were claiming possession over the lands in question, and had also claimed that the crop was cultivated by them. It is apparent from the Appellate Court judgment that the witnesses examined on behalf of the prosecution had admitted that the paddy crop was cultivated by the accused appellants. In view of these facts, Appellate Court below has found that the offence is not made out against the petitioners u/s 379 I.P.C., and the conviction of the petitioners for the said offence has been set aside. However, the Appellate Court maintained the conviction of the petitioners for the offence under Sections 144 and 353 of the I.P.C.

5. Learned counsel for the petitioners has submitted that the impugned judgments passed by the Courts below cannot be sustained in the eyes of law, inasmuch as, the informant has not been examined in this case and the I.O. has also not been examined and the defence has been prejudiced due to their non-examination. It has also been submitted that no evidence was adduced on behalf of the prosecution to show that the said lands were ever attached or any receiver was ever appointed and in view of the admitted position that the petitioners were claiming possession over the lands in question and witnesses examined by the prosecution had admitted that the paddy was cultivated by the petitioners, the

petitioners could not be convicted even for the charge under Sections 153 (sic--353?). and 144 of the I.P.C. as well.

6. Learned counsel for the State on the other hand has submitted that there is no illegality in the impugned judgments passed by the Courts below and the petitioners have also been given the benefit of Probation of Offenders Act.

7. After having heard learned counsel for both the sides and upon going through the record, I find that the case relates to theft of paddy crop from the lands in question, which are alleged to be attached in a proceeding u/s 145 of the Cr. P.C., and receiver was also allegedly appointed on the same, it is apparent from the record that neither the Informant, nor the I.O. were examined in this case and the prosecution had not brought any document to show that the lands in question were ever attached in any proceeding or any receiver was so appointed. Witnesses examined by the prosecution have admitted that the accused petitioners had a claim of possession over the lands in question and it was the defence side, which had actually cultivated the paddy. In that view of the matter, I am of the considered view that prosecution had failed to substantiate the charges even under Sections 144 and 353 of the I.P.C. beyond any reasonable doubt and the accused petitioners ought to have been given at least the benefit of doubt for these charges also.

8. For the foregoing reasons, the accused petitioners are given the benefit of doubt and the impugned judgments dated 7.6.99 passed by Shri P.N. Singh, learned Judicial Magistrate, 1st Class, Jamtara, in G.R. No. 639 of 1994/T.R. No. 133 of 1999, as also the judgment dated 14th July, 2003 passed by the learned 3rd Additional Sessions Judge, F.T.C., Jamtara, in Cr. Appeal Nos. 57 of 1999/2 of 2003, are hereby, set aside and the petitioners are acquitted of the charge. Accordingly, this revision application is allowed. Let the Lower Court Records be sent back forthwith.