
(1981) 10 P&H CK 0031
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 1486 of 1979

Charan Singh and others

APPELLANT

Vs

The State of Punjab and another

RESPONDENT

Date of Decision : 12-10-1981

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 107

Citation : (1981) 10 P&H CK 0031

Hon'ble Judges : B.S. Yadav, J

Bench : Single Bench

Advocate : Achhra Singh, for the Appellant; R.M. Gupta for Complainant and Mr. S.S. Aulakh for A.G. (Pb.), for the Respondent

Final Decision : Allowed

Judgement

B.S. Yadav, J.—Gurdial Singh filed a complaint in the Court of Judicial Magistrate 1st Class, Bassi Pathana against the present petitioners. In that complaint, it was alleged that the parties are residents of village Kotla. The house of the complainant is situated towards the East of "Bara Darwaja". It was further alleged that since the time immemorial and the founding of the village, the natural flow of water used to be towards the side of Gopalon-Karimpura road through the shamlat Deh shown as "ABCD" in red in the site plan. Some time back, accused No. 1. Charan Singh in connivance with the then Panchayat tried to divert and obstruct the natural flow of water towards the South, but on a suit filed by the complainant and Santa Singh etc, the accused petitioners were restrained from doing so. On this Charan Singh petitioner got annoyed, because he had designs to illegally occupy the Shamlat Deh.

2. It is then alleged that on 17th August, 1975, all the accused, in furtherance of their common intention of obstructing the natural flow of the water, illegally and forcibly erected a Bandh in the public lane and obstructed the flow of water in front of the complainant's house and thereby committed mischief by causing the obstruction of natural flow and inundation of water which caused the complainant

and his family members a lot of inconvenience and hardship. When all the accused were erecting the said Bandh, the complainant went there to check them and remonstrated, but they rebuked him by using filthy language in order to commit breach of public peace and also rushed towards him with Kahis in their hands and held out a threat of physical injury. However, the complainant was saved by some persons, who were present there. The complainant lodged a complaint with the Police station, Bassi Pathana, Sub-Inspector Zora Singh, S.H.O. Police Station Bassi Pathana, went to the spot and asked the accused to remove the obstruction in the thoroughfare and the natural flow of water, but the accused did not oblige him. Since the Police took no action except starting proceedings u/s 107, read with Section 151 Criminal Procedure Code, the complainant filed the present complaint in Court.

3. After recording preliminary evidence, the learned trial Court framed charges under Sections 147, 432 read with Section 149 Indian penal Code, Section 504, read with Section 149, Indian Penal Code and Section 506 read with Section 149, Indian Penal Code, against the accused.

4. The complainant examined S.T. Zora Singh S.H.O. Police Station Bassi Pathana (P.W. 1), Fateh Singh (P.W. 2), Chand Kumar draftsman (P.W. 4), Gurmukh Singh (He was also given the Serial No. 4) and he himself appeared as P.W. 5. All the prosecution witnesses supported the allegations levelled in the complaint.

5. After the close of the prosecution evidence, the accused, when examined u/s 313, Criminal Procedure Code, denied, the prosecution allegations and pleaded that the natural flow of water was never towards Gopalan Karimpura road and the complainant had himself diverted the same towards the East.

6. The learned trial Court convicted the accused-petitioners under Sections 432. 504 and 506, read with Section 149, Indian Penal Code. However, they were acquitted of the offence u/s 147, Indian Penal Code. The learned trial Court released the petitioners on probation u/s 360, Criminal Procedure Code.

7. Feeling aggrieved, the petitioners filed an appeal which was partly accepted by the learned Additional Sessions Judge. Patiala, in as much as the accused were acquitted of the charges under Sections 504 and 506, Indian Penal Code, but the conviction of the accused u/s 432, Indian Penal Code, was maintained. The period of probation was also reduced to one year. Feeling aggrieved, the accused-petitioners have come up to this Court in revision.

8. The Learned Counsel for the accused-petitioners argued that before attracting the provisions of section 432 Indian Penal Code, the prosecution has to prove that the mischief consisted of causing inundation or obstruction to public drainage which was likely to be attended with damage and that mischief was done with the knowledge that it was likely to cause such injury. He further argued that the learned lower Appellate Court has nowhere held that the alleged inundation or obstruction was likely to be attended with injury or damage or that the mischief was done with the knowledge that it would cause or likely to cause

such injury. In my opinion, this argument has force. The learned, lower Appellate Court observed as follows :--

Although it is not made known about the extent of damage caused by the raising of this obstruction, but it would certainly cause inconvenience to the persons living in the vicinity as the water would be diverted to their houses.

9. I am of the opinion that merely because some inconvenience has been caused to the complainant or the persons living in the vicinity by the stoppage of the flow of the water. Section 432, Indian Penal Code, would not be attracted to the present case. The complainant was to prove that the inundation or obstruction to the public drainage was likely to cause injury or damage and that it was within the knowledge of the accused that it would cause such injury. There is no satisfactory evidence on these points. Hence, in view of the above discussion. I hold that the construction of the Bandh by the accused-petitioners does not amount to an offence u/s 432 of the Indian Penal Code.

10. I, therefore, accept the present revision petition and set aside the conviction of the petitioners. The period of bonds has already expired.