
(1994) 11 P&H CK 0045
In the Punjab And Haryana At Chandigarh
Case No : Criminal Revision No. 130 of 1994

Daropati Devi

APPELLANT

Vs

Daulat Ram and others ,

RESPONDENT

Date of Decision : 19-11-1994

Acts Referred:

Citation : (1995) 1 Crimes 617 : (1995) 1 RCR(Criminal) 256

Hon'ble Judges : H.S.Bedi, J

Advocate : G.S. Gill, Parveen Kataria, S.C. Chhabra, Advocates for appearing Parties

Judgement

H.S. Bedi, J. (Oral)

1. The present petition arises out of FIR No. 48 dated 11.7.1993 registered against respondents Daulat Ram and his wife Kanta Rani under Sections 436, 437, 506 read with Section 34, Indian Penal Code, at Police Station (City) Jalalabad, District Ferozepur.

2. Daropati Devi complainant, who is stated to be the first wife of Daulat Ram petitioner, made a statement to the police that when her husband remarried Kanta Rani about 18 years back by way of an arrangement, Daulat Ram gave her a house to live in and also executed an agreement to that effect in her favour. She further alleged that a room in that house had been rented out by her and on account of disrepair, the roof of the said room fell in. She further alleged that her efforts to get the roof replaced were resisted by Daulat Ram, whereupon some altercation took place between the two. The matter was however amicably resolved with the intervention of certain respectable of the area and she also obtained an order from the Court for repair of the roof, It has been further urged that despite this order Daulat Ram and Kanta Rani carrying a matchbox and a can of kerosene, respectively, came to the house in question and threatened to set the room on fire and while carrying out the threat, Kanta Rani sprinkled kerosene in the room and on the Rehri standing outside and Daulat Ram lit the fire and then both of them ran away. On these facts the aforesaid, F.I.R, was

registered. When the challan was put in Court, it was argued by the learned counsel for the accused that no offence under section 436 I.P.C. was made out against them and at best, the matter fell within section 435 thereof. This plea of the defence was accepted by the trial Magistrate who ordered that a charge under section 435 of the Code be framed against the accused. It is against this order that the present petition has been filed by the complainant.

3. Mr. S.C. Chhabra, learned counsel for the petitioner, has urged that the finding recorded by the trial Court was based on a total misconception of section 436 of the Code and a misreading of the documents on record. He has urged that as per the facts set out in the FIR the room in question was a part of a large building and as such the matter fell within the mischief of section 436. He has further urged that even assuming that the room in question was a solitary one, merely because the roof had given way, it would not cease to be a building. Mr. Chhabra has also placed a reliance on the word "building" as defined in the Law Lexicon wherein it has been held to mean something which is exclusively used for human habitation of a person or a group of persons including a family. He has also stated that it was not necessary that for the particular structure to be called a building, it must always have a roof and there can be a building for which a roof may not even be necessary. In support of this proposition, Mr. Chhabra has placed reliance on *State of Gujarat v. Vedva Vaghari Mod Nagji*, (1972) 13 Guj. L.R. 684 at page 686 and *K.V. Neath Canal Navigation Co.*, (1871) 40 L.J.M.C. 193 at page 197.

4. Mr. Parveen Kataria, Advocate, appearing for respondent Nos. 1 and 2 has however raised a preliminary objection to the effect that the findings of fact recorded by the trial Court were not liable to be interfered with as it was for that Court to determine as to under what section the accused were liable to be charged. He has also urged on facts that the documentary evidence which was in his possession clearly indicated that the room which was the subjectmatter of dispute was under the exclusive possession of the respondentaccused and had not been given to the complainant at any stage.

5. After hearing learned counsel for the parties, I find merit in the stand of the petitioner. Section 436 of the Code provides for punishment for an attempt to cause damage or destruction of a building which is used as a place of worship or as a human dwelling or as a place for the custody of property. It will be apparent from the facts narrated above that there is a dispute between the parties as to whether the room in question had been rented out by the complainant or not but this matter cannot be gone into in the present proceedings and would be a question of fact to be determined by the trial Court after recording of evidence. It will also be clear that a room which was a part of a larger building would undoubtedly form a part of that building as well. Even assuming for a moment that the room in question did not form a part of the larger building and was a solitary one, even then it would not cease to be a building in view of the definition of "building" referred to above. Moreover for a building to be

recognised as such it is not essential that the roof must always be there. The finding of the Judicial Magistrate that as the roof had fallen in, the room ceased to be a building is, on the face of it, erroneous.

6. For the reasons recorded above, the present petition is allowed and a direction is issued to the trial Magistrate to remit the case to the Sessions Court for trial for an offence under Section 436 and other allied offences, it is however made clear that the respondent accused will not be arrested for the offence under section 436 I.P.C. for a period of four weeks from today.