

(2011) 04 AHC CK 0442

In the Allahabad High Court

Case No : Criminal Miscellaneous Writ Petition No. 5805 of 2011

Dilip Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Penal Code, 1860 (IPC) — Section 425

Prevention of Damage to Public Property Act, 1984 — Section 2, 3, 3(2), 4

Citation : (2011) 2 ACR 1830 : (2011) 4 ADJ 848 : (2011) CriLJ 2832 : (2011) 4 RCR(Criminal) 670 : (2011) 4 RCR(Criminal) 670

Hon'ble Judges : Arvind Kumar Tripathi, J; Amar Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the Petitioner and the learned A.G.A. for the State.
2. The allegations in the F.I.R. were that the Petitioner was trying to get construction made on public land. His principal contention was that by getting construction made on public land, no offence u/s 3 or 4 of the Prevention of Damage to Public Property Act, 1984, (hereinafter Public Property Act), is disclosed. We are not in agreement with this submission. Section 3 consists of two parts. The first part 3(1) refers to any mischief by doing any act in respect of any public property, other than public property of the nature referred to in Sub-section (2), which shall be punished with imprisonment for a term which may extend to five years and with fine. Mischief has been defined in Section 2(a) of the Public Property Act. The definition of "mischief is to have the same meaning as given u/s 425 of the Indian Penal Code (45 of 1860). Section 425 of Indian Penal Code defines mischief thus:

Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits mischief. Thus this

Section clearly speaks of causing any change in property or to destroy or diminishes its value or utility, or affects it injuriously, commits "mischief. Thus, on this broad definition, certainly by making construction on public land, which is not permissible, its utility will be diminished and the property will be injuriously affected.

3. The second error in the counsel's argument is that he has mixed up two provisions as Section 3(2), which provides higher punishment i.e. punishment up to 5 years and fine but a minimum punishment of 6 months, speaks of committing mischief by doing any act in respect of a particular class of public property being:

(a) any building, installation or other property used in connection with the production, distribution or supply of water, light, power or energy;

(b) any oil installations;

(c) any sewage works;

(d) any mine or factory;

(e) any means of public transportation or of telecommunications, or any building, installation or other property used in connection therewith,

4. It is clarified that u/s 2(b) of the Public Property Act, public property means any property, whether immovable or movable (including any machinery) which is owned by, or in the possession of, or under the control of:

(i) the Central Government; or

(ii) any State Government; or

(iii) any local authority etc.

5. The present property was clearly in possession of the Government. The wide definition would therefore include all kinds of immovable property and not only the specific kind of property mentioned in Section 3(2) of the Public Property Act.

In this view of the matter, it cannot be said that the F.I.R. does not disclose any cognizable offence. There is no merit in this petition.

It is dismissed.