
(2004) 03 RAJ CK 0049

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 282 of 1994

Dwarka Prashad (Shri)

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 03-03-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197, 482
Penal Code, 1860 (IPC) — Section 147, 149, 323, 324, 450

Citation : (2004) 3 RLW 1858 : (2004) 2 WLC 637

Hon'ble Judges : N.N. Mathur, J

Bench : Single Bench

Advocate : Sandeep Mehta, for the Appellant; Ramesh Prohit, Public Prosecutor and M.L. Garg, for the Respondent

Final Decision : Allowed

Judgement

N.N. Mathur, J.—By way of instant petition u/s 182 of the Code of Criminal Procedure the petitioner has challenged the order dated 10th February, 1994 passed by the Additional Sessions Judge, (Special Judge, (Prevention of Atrocities Act) Cases, Hanumangarh refusing to interfere with the order dated 27.8.1990 passed by the Munsiff & Judicial Magistrate, Loonkaransar taking cognizance against the petitioner and others for offence u/s 147, 323, 324, 450 & 149 I.P.C.

2. Briefly stated the facts giving rise to the instant petition are that Liyaquat Ali the son of second respondent Munshi Khan submitted a written First Information Report on 29.1.1990 at Police Station, Loonkaransar at about 8:30 P.M. stating inter alia that he was in possession of a residential house in Ward No. 14 of Village Loonkaransar. There was some dispute regarding which proceedings were pending in the competent court. But the petitioner herein holding the office of Additional District Magistrate alongwith the Tehsildar and a force consisting of about 15-20 persons arrived at his house and malafidely damaged the same. On being objected his mother, father, brother sisters were also assaulted. It is

alleged that the petitioner and the Tehsildar left the place of occurrence after directing the force to put the house to fire. As per the directions the house was put to fire and it was reduced to ashes. His belongings and the cattle were also burnt. The police after investigation forwarded a final report to the court of Judicial Magistrate, Loonkaransar. However, the learned Magistrate by the impugned order has taken cognizance against the petitioner and others for offence u/s 147, 436, 323, 324, 450 & 149 I.P.C.

3. The petitioner challenged the said order by way of revision before the court of Sessions Judge which was eventually heard by the Special Judge (Prevention of Atrocities) Cases, Hanumangarh. It was pointed out that the second respondent Munshi Khan was unauthorizedly occupied a piece of land measuring 300 Sqr.ft. and constructed a hut thereon. He was given a notice dated 26.10.81 u/s 22 of the Rajasthan Colonisation Act, 1954 (hereinafter referred to as the Act) for removal of the unauthorized possession. The second respondent contested the said notice by way of filing a civil suit in the court of Munsiff & Judicial Magistrate, Loonkaransar. A temporary injunction was granted in his favour. The suit was dismissed by the judgment and decree of the civil court dated 23rd January, 1990. Thus, the unauthorised possession was removed on 29.1.90. It was further stated that with respect to the same incident the petitioner had also sent a report to the Police Station, Loonkaransar, which was registered in the Roznamcha at S. No. 977. It is averred therein that on 22.6.81 the Patwari submitted a written report to the effect that the second respondent Munshi Khan had illegally occupied a piece of land measuring 300 Sq.Ft., and also constructed a hut thereon. On the same, the Tehsildar, Mandi Loonkaransar issued a notice to Munshi Khan to remove the unauthorized construction which was served on his son Liyaquat Ali. The notice was repeated, which was served on Munshi Khan himself. But no reply was given. Accordingly the Tehsildar, Mandi, Loonkaransar on 26.10.81 declared the possession illegal and passed an order for its removal and issued a notice to Munshi Khan on 23rd March, 1982 to remove the unauthorized occupation within 7 days failing which the department will do the same. However, Munshi Khan filed a civil suit in the court of Munsiff & Judicial Magistrate, Loonkaransar and obtained a temporary injunction. However, the said injunction was vacated with the dismissal of the suit by the judgment and decree dated 23rd January, 1990. As a result of dismissal of the temporary injunction the proceedings for removal of the unauthorized occupation were revived and after due notice the concerned officers took out the execution. Apprehending the resistance by Munshi Khan a police protection was also sought. Thus, when the petitioner along with the police party reached on the spot for removal of the unauthorized occupation, it was resisted by Munshi Khan and his family members. They pelted stones on the persons engaged in conducting the operation of removal and in order to prevent obstruct the public servants in discharge of their duty on the instigation of Bhagwan Lal, Munshi Khan, his wife and his daughter after sprinkling oil, set fire to the hut. The police registered a case against the second respondent Munshi Khan and others for offence u/s 436,

332, 353, 336, 147, 148 & 149 I.P.C. After investigation Munshi Khan and other have been challaned for the aforesaid offences in the court of concerned Magistrate. The instant F.I.R. Has been filed by Munshi Khan as a counter blast. The learned Special Judge rejected the revision petition on the ground that the petitioner and others were not authorized to undertake the removal proceedings because according to him from the investigation file it did not reveal that on the date of incident and in question was under the Colonisation Department and the A.D.M. and Tehsildar were authorized to undertake these proceedings. He further expressed the view that it was only the Collector u/s 22 of the Act, who was authorized to remove the unauthorized occupation. As the petitioner was not authorized to remove the unauthorized occupation, he was not entitled to protection under the provisions of Section 197 Cr.P.C. The learned Judge dismissed the revision petition by the impugned order.

4. I have heard the learned counsel for the petitioner and perused the record. The learned counsel has referred to certain notifications to show that the land in question was governed by the provisions of the Act. He has also referred to the notification to show that the Additional Secretary, Mandi Vikas Samiti and the Naib Tehsildar were authorized u/s 22 of the Act to undertake the proceedings for removal of the unauthorized occupation/construction. Reference has been made to a notification dated 17th June, 1986 whereby the area covering the subject piece of land was under the Colonisation Department. The notification finds place at page No. 14 of the paper book, which has not been disputed by the learned counsel for the respondent. Two other notifications dated 19.3.81 shows that the Naib Tehsildar and Additional Secretary, Mandi Samiti were authorized u/s 22 of the Act for removing the unauthorized possession. Both the notifications are extracted as follows:-

"Notification No. F.4(29)Rev/Col/79 dated March 12, 1981 published in the Rajasthan Government Gazette Part 1A dated 19.3.1981 (Page 140).

In exercise of the powers conferred under Sub-clause (a) Clause (1) of Section 2 of the Rajasthan Colonisation Act, 1954 (Rajasthan Act XXVII of 1954), the State Government hereby appoints Naib Tehsildar Mandi Development Committee, Bikaner to perform the functions and exercise the powers of Collector u/s 22 of the said Act within his territorial jurisdiction."

"Notification No. F.4(29)Rev/Col./79 dated March 12, 1981 published in the Rajasthan Government Gazette Part 1A dated 19.3.1981 (Page 140).

In exercise of the powers conferred under Sub-clause (a) Clause (1) of Section 2 of the Rajasthan Colonisation Act, 1954 (Rajasthan Act XXVII of 1954) the State Government hereby appoints the Additional Secretary, Mandi Development Committee, Bikaner to perform the functions and exercise the powers of Collector u/s 22 of the said Act, within his territorial jurisdiction."

5. In view of aforesaid notifications it can safely be concluded that on the date of incident the land in question was covered by the Colonisation Act and the

Additional District Magistrate and the Sub Tehsildar were authorized to take the proceedings u/s 22 of the Act. It is well settled by the Apex Court as back as in *Mata Jog Dobey v. H.C. Bihar* (1), that in the matter of grant of sanction u/s 197 of the Code of Criminal Procedure the offence alleged to have been committed by the accused must have something to do or must be related in some manner with the discharge of the official duty. In other words there must be a reasonable connection between the act and the discharge of the official duty. It is further held that the act must bear such relations to the duty that accused could lay a reasonable claim but not pretended or fancible claim that he had did it in performance of his duty. It has also been held that where a power is conferred or a duty is imposed by a statute or otherwise and there is nothing said expressly inhabiting the exercise of the powers in performance of the duty by any limitation or restriction, it is reasonable to hold that it carries with it the power of doing of such acts or employing such means as are reasonably necessary for such execution, because it is a rule that when the law commands a thing to be done, it authorizes the performance of whatever may be necessary for executing its command. This decision has been followed by the Apex Court and this Court in number of cases. Lastly it has been referred and followed by the Apex Court in *Abdul Wahab Ansari v. State of Bihar and Anr.* (2).

6. In the instant case I have no hesitation to come to the conclusion that the petitioner in discharge of his official duty along with the police party went to the spot and removed the unauthorized occupation of the second respondent. In view of the matter the provisions of Section 197 Cr.P.C. applies to the facts of the present case. Admittedly, there being no sanction, the cognizance taken by the Magistrate is bad in law and unless the same is quashed qua the petitioner, it will be an abuse of the process of the court.

7. Consequently, I allow the petition and quash the order of the Special Judge, SC/ST (Prevention of Atrocities) Cases, Hanumangarh dated 10th February, 1994 and the order of the Munsiff & Judicial Magistrate, Loonkaransar dated 27.8.90. The proceedings against the petitioner stand quashed. The record of the case be returned forthwith.