

(2017) 05 SHI CK 0010
In the High Court Of Himachal Pradesh
Case No : 30 of 2015

Mohammad Ali & another

APPELLANT

Vs

Karim Bax & others

RESPONDENT

Date of Decision : 01-05-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 147](#),
[Section 323](#), [Section 506](#), [Section 149](#), [Section 451](#) - Punishment for rioting - Punishment for voluntarily causing hurt - Punishment for criminal intimidation - Every member of unlawful assembly guilty of offence committed in prosecution of common object - House-trespass in order to commit offence punishable with imprisonment

Citation : (2017) 05 SHI CK 0010

Hon'ble Judges : Chander Bhusan Barowalia

Bench : Single Bench

Advocate : Suneel Awasthi, Dheeraj K. Vashisht, Pushpinder Jaswal, Rajat Chauhan

Judgement

1. The present petition is maintained by the petitioners/accused persons (hereinafter to be called as "the accused persons") under Section 482 of the Code of Criminal Procedure (hereinafter to be called as "the Code") for setting aside the judgment, dated 14.08.2014, passed by learned Additional Sessions Judge-II, Una, camp at Amb, District Una, H.P., in criminal revision RBT No. 19/2013, wherein order dated 11.02.2013, passed by learned Judicial Magistrate 1st Class, Court No. 1, Amb, District Una, H.P., in a complaint No. 275-1/12, summoning the accused persons for the commission of offences under Sections 451, 323, 147, 506 read with Section 149 of the Indian Penal Code, was affirmed.

2. Brief facts giving rise to the present petition are that Karim Bax/complainant (hereinafter to be called as "the complainant") has filed a complaint against the accused persons, wherein he alleged that he is permanent resident of village

Dhar Gujran, Tehsil Amb, District Una, H.P., having his abadi in the village and adjacent to abadi, there is land of the accused persons, the accused persons, in order to cause damage to the abadi of the complainant, often digging the land near the foundation and cattle shed of the complainant. As a result of which, cracks developed in the abadi of the complainant and as a result of which, the abadi of the complainant has collapsed in the rainy season. After the collapse of his abadi, the complainant got it repaired and spent more than Rs. 2,00,000/- on it. The complainant thereafter moved an application before Gram Panchayat and the Pradhan on 12.07.2012, visited the spot, in his presence also, accused persons started digging the drain beside the abadi and cattle shed and when the wife of the complainant tried to stop the accused persons, they criminally trespassed into the abadi of the complainant and assaulted the complainant alongwith his wife, pelted stones and also caused beatings with fist blows, as a result of which, they sustained injuries. The complainant, his wife and one Sh. Shabir Mohammad were rescued by the Pradhan and other persons of the village. Thereafter, the matter was reported to the Police and medical examination of the injured persons was conducted. However, on 08.08.2012, the complainant came to know that the Police have only lodged FIR against him, whereas no action has been taken against the accused persons. Thus, he filed complaint before the learned trial Court, wherein he examined himself as CW-1 and two other witnesses, Ramzan Mohammad as CW-2 and Nazir Mohammad as CW-3, whereby the witnesses in their testimony, supported the contents of the complaint. Medical report shows that the complainant and other persons have sustained injuries in the alleged occurrence. In view of the evidence on record, the learned trial Court summoned the accused persons for the commission of offences, under Sections 451, 323, 147, 506 read with Section 149 of the Indian Penal Code. Feeling aggrieved by the said decision, the accused persons have preferred the revision petition before the learned lower Appellate Court, wherein the petition filed by the revisionists was dismissed. Hence the present petition.

3. Respondent/State by filing reply to the petition averred that in the present proceedings there is no necessity to implead the State as a party and keeping in view the above facts and circumstances of the case the present petition deserves to be dismissed.

4. I have heard the learned counsel for the parties and gone through the record carefully.

5. Learned counsel for the petitioners/accused persons (before the learned Courts below) has argued that both the learned Courts below have committed illegality in passing orders against the petitioners/accused persons and such orders are required to be set aside.

6. On the other hand, learned counsel for respondent No. 1/complainant (before the learned Courts below) has argued that the orders passed by the learned Courts below are just, reasoned and after appreciating the facts, which has come on record to its true perspective, hence needs no interference.

7. It is clear that the learned Court below has issued the process after considering all the relevant material on record and this Court did not find any ambiguity in the order, passed by the learned trial Court for proceeding against the accused persons. The allegations, as has come on record and the evidence, as recorded by the learned trial Court it is clear that prime facie case is made out against the accused persons. The statement of the complainant and other witnesses makes out the prime facie case against the accused persons.

8. Accordingly, I find no illegality in the order passed by the learned trial Court, which was upheld by the learned lower Appellate Court. Further the extreme powers vested in this Court under Section 482 of the Code are only required to be exercised in exceptional cases, whereas the present case does not falls in the category of such cases.

9. Taking into consideration the facts, which has come on record, I find no merit in the present petition, the same deserves dismissal and is accordingly dismissed. However, my observations made hereinabove will have no bearing in the merit of the present case. Parties are directed to appear before the learned trial Court on 29th May, 2017.

10. The petition, so also the pending application(s), if any, shall also stands disposed of.