

(2002) 02 RAJ CK 0171
In the Rajasthan High Court
Case No : Criminal Appeal No. 161 of 1988

Municipal Council

APPELLANT

Vs

Bhagwan Lal Khatri

RESPONDENT

Date of Decision : 05-02-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Rajasthan Municipalities Act, 1959 — Section 170(II)

Citation : (2002) CriLJ 3106

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : L.M. Lodha, for the Appellant; S.G. Ojha, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This appeal has been filed by the Municipal Council, Pali, against the judgment and order of acquittal dated 16-12-87 passed by the learned Additional Judicial Magistrate, Pali in Criminal Original Case No. 434/86 by which the learned Judicial Magistrate acquitted the accused-respondent for offence u/s 170(II) of the Rajasthan Municipality Act, 1959.

2. It arises in the following circumstances :

(i) On 10-8-84 a complaint was filed by Parokar Shri Satya Narayan Joshi in the Court of Judicial Magistrate, Pali stating that on 27-2-84 the accused-respondent was making construction without permission of the municipality over his land and thus by doing so, he committed the offence punishable u/s 170(ii) of the Act of 1959. The site was inspected by P.W.3 Ganpat Lal in presence of P.W.I Viru Ram and P.W.2 Banshi on. 27-2-84 and Fard Ex.P/1 was prepared by P.W.3 Ganpat Lal on the same day.

3. On 11-4-86, the learned Magistrate read over the contents for offence u/s 170(ii) of the Rajasthan Municipalities Act, 1959 to the accused respondent who pleaded not guilty and claimed trial.

4. During trial, as many as 3 witnesses have been produced on behalf of the prosecution and statement of accused-respondent was recorded u/s 313, Cr.P.C. and no witness was examined in defence.

5. After conclusion of the trial, the learned trial Magistrate acquitted the accused-respondent through his judgment and order dated 16-12-87 inter alia holding that:

i) That it has been proved by the prosecution that so called construction was being done by the accused-respondent as P.W.3 Ganpat Lal did not make any enquiry on the spot about the fact whether the construction was being done at the instance of accused-respondent or not.

ii) That it has not been proved by the prosecution as to what type of construction was being going on as P.W. 1 Viru Ram and P.W.2 Banshi only stated that foundation was being dug.

iii) That P.W.3 Ganpat Lal stated in his statement that the accused-respondent was present on the spot, but in Fard Ex.P/1, signatures of the accused-respondent are not there nor there is any endorsement that he refused to sign. In these circumstances, the presence of accused-respondent at the site is doubtful.

6. Aggrieved from the said judgment and order this appeal has been filed by the Municipal Council.

7. In this appeal, it has been argued by the learned counsel for the Municipal Council that findings of acquittal recorded by the learned Magistrate are erroneous one and they are liable to be set aside and this appeal is liable to be allowed and the accused-respondent is liable to be convicted for the offence u/s 170(ii) of the Rajasthan Municipality Act, 1959.

8. On the other hand, the learned counsel for the accused-respondent submits that the Judgment and order of the trial Magistrate are based on correct appreciation of evidence and the same do not call for interference by this Court.

9. I have heard both and perused the record.

10. In this case, it has not been proved by the prosecution that the construction was being done at instance of the accused-respondent and further more by simply digging foundation, inference cannot be drawn that the construction was being done and apart from that presence of the accused-respondent on the site is doubtful.

11. In my considered opinion, the judgment of the learned Magistrate is based on correct appreciation of evidence and the reasons which has been assigned by the learned Magistrate are reasonable and plausible and cannot be entirely arid effectively dislodged or demolished and this Court sitting and hearing appeal against acquittal would not like to disturb the order of acquittal merely on flimsy grounds.

For the reasons mentioned above, the present state appeal is dismissed after confirming the judgment and order dated 16-12-87 passed by the learned Additional Judicial Magistrate, Pali.