
(2005) 11 MP CK 0067

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 1214 of 1996

Munsa Kumhar

APPELLANT

Vs

Brij Kishore and others

RESPONDENT

Date of Decision : 30-11-2005

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 151
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)(iv)

Citation : (2006) 2 MPLJ 93

Hon'ble Judges : Rakesh Saxena, J

Bench : Single Bench

Advocate : P.N. Pathak, for the Appellant; D.N. Shukla for Non-petitioners and Prakash Gupta, Panel Lawyer for State, for the Appearing Parties

Final Decision : Dismissed

Judgement

Rakesh Saxena, J.

Complainant/petitioner Munsa Kumhar has filed this revision against the judgment dated 9-9-1996 passed in Special Case No. 61 of 1996 acquitting the non-petitioners/accused persons of the charge for the offences u/s 3(1) (iv) (v) (x) and (xv) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

In brief the prosecution case is that on 18-9-1993, complainant submitted a written report to the Superintendent of Police, Shahdol that he resides behind Nagarma P.S. Tall, Sohagpur. Accused persons forcibly occupied his land by wrongfully dispossessing him and used to insult him and his wife often, when he used to pass from the way. In the night of 2-9-1993 police personnel of police Shahdol had taken him from his house and had detained him in 151, Criminal Procedure Code. On the same night accused P. P. Singh and Brij Kishore had come to his house and had kicked at his doors and had abused and intimidated the inmates of the house. According to him accused persons were doing all this

with a view to grab his land. On the aforesaid report, first information report (Ex. P/8) was recorded against the accused persons. During investigation police got the disputed land inspected and demarcated by the Revenue Inspector Tejraj Singh (PW-4), who prepared Panchnama (Ex. P/5), spot map (Ex. P/6) and submitted his report to the Police (Ex. P/7). According to Najri Naksha (Ex. P/6), the accused persons were found to be in possession of different portions of land comprised in survey No. 1817 and vide report Ex. P/7, complainant Munsa Kumhar was found in possession of some part of land in survey No. 1794. After requisite investigation the charge-sheet was filed. During trial, the learned Special judge framed the charges against the accused persons for the aforesaid offences.

Defence of the accused persons was that false report was lodged by the complainant. They had not occupied the land of complainant, their houses and Badi were constructed on government land. Defence of Padmanabhipatti @ P. P. Singh was that he was not present at the spot and was falsely involved in the case. During trial the prosecution examined Munsa (PW-1), Sukbariya (PW-2). Tijiyabai, mother of Munsa (PW-3), Tejraj Singh, Revenue Inspector (PW-4). R. N. Tiwari, A.S.I. (PW-5) and P. D. Tiwari, Investigating Officer (PW-6). After due appreciation of evidence of the aforesaid prosecution witnesses and the documents adduced by the prosecution and the accused persons, the learned trial Court came to hold that the prosecution evidence was not reliable and the prosecution could not prove the alleged offences against the accused persons beyond doubt.

Learned Counsel for the petitioner/complainant submitted that the learned Special Judge erred in holding that the complainant was not in possession of the disputed land merely because the accused persons had filed civil suit challenging the decree in his favour. He submitted that since the decree passed by the Civil Court in favour of the complainant was not stayed in the suit filed by the accused persons, it had attained finality. He further submitted that the Special Judge had mis-appreciated the evidence in disbelieving the allegations of abuse and threats having been given to complainant and his wife on 2-9-1993 and other occasions, though there was positive evidence on record. He submitted that the findings of the trial Court were perverse and deserved to be set aside.

Per contra, Learned Counsel for the non-petitioners/accused submitted that the learned trial Court had passed the judgment of acquittal after due appreciation of evidence. The appreciation done by the trial Court cannot in any manner said to be perverse and the findings arrived at by it cannot be said to be not based on record. He submitted that there was no procedural illegality or any manifest error of law committed by the Court below in passing the order of acquittal. In the revision against the acquittal the entire evidence cannot be re-appreciated, even if other view is also possible on the basis of the evidence on record, the finding of acquittal recorded by the trial Court cannot be interfered with.

I have heard the counsel of both the sides and perused the evidence and

material on record. On perusal of the photocopy of the certified copy of the judgment and decree dated 9-12-1988, in favour of complainant, it is apparent that the said decree was passed on the suit filed by Lalua and Munsa against the State of Madhya Pradesh. The State did not appear and contest the suit and the said decree was passed ex parte against it. By the aforesaid judgment, the complainant was declared to be the bhumiswami, in possession of the agricultural land comprising in survey No. 1794 and 1817, however, this decree was only against the State. Accused persons were not the party in the aforesaid civil suit. Learned Counsel for the complainant submitted that in the year 1988 when the decree was passed, accused persons had not occupied the disputed land, therefore, there was no question for impleading them as party in the suit and since the aforesaid judgment and decree was not set aside or reversed by any Court, it had attained finality against every one. Learned Counsel for the accused/non-petitioners submitted that on 19-12-1989 when accused persons came to know about the existence of aforesaid decree, they obtained the certified copy of the judgment and decree and filed an appeal and also a civil suit for cancellation of the aforesaid judgment and decree on 24-2-1993. It is only when the complainant came to know about filing of the suit by the accused persons, he lodged the report about the alleged dispossession on 18-9-1993 i.e. after about seven months of the filing of the suit. On perusal of the first information report it is found that complainant has given contradictory versions. At one place he stated that the accused persons had forcibly occupied the land and at another place stated that they were threatening and intimidating him with a view to force him to leave the land and to grab the same. From the facts mentioned in the first information report, it is not clear that the complainant was dispossessed by accused persons at the time of lodging the aforesaid report.

In para 6 of his statement, Munsa (PW-1), he has deposed that accused persons had forcibly occupied his land since the year 1990-91 and though he had made the complaints, but he could not produce any document in that regard. Sukbariya (PW-2) and Tijiyabai (PW-3), whose statements were recorded in the year 1996, also deposed that the accused persons had grabbed their land 4-5 years ago. From the aforesaid evidence it appears that the accused persons were in possession of the land since long back but the report was made against them only on 18-9-1993. The decree in favour of the complainant was an ex parte decree against the State in which the accused persons were not the party and the accused persons had challenged the same by filing the civil suit for cancellation of the decree. In the plaint, Ex. D/2, the accused persons had pleaded that the disputed land was a government land and they were in possession of the disputed land since the year 1955. Accused Ramnath had pleaded that he was in possession of some part of land comprising in Khasra No. 1817 since around 20 years and in the year 1985 proceedings u/s 248 of M.P. Land Revenue Code were instituted against him wherein a fine was also imposed upon him. In the plaint the accused persons had pleaded that they and number of other persons had occupied the disputed land since long back, but the

complainant, with mala fide intention, had stealthily filed the civil suit against the State and got an ex parte declaration in his favour. In the above circumstances it cannot be said that the finding recorded by the trial Court that the complainant failed to establish his ownership and possession over the disputed land was in any manner erroneous or illegal. Since the civil suit filed by the accused persons is said to be pending against the complainant, the judgment and decree in favour of the complainant against the State cannot be held to be binding on the accused persons.

From the evidence of the complainant Munsa and Tijiyabai it is apparent that accused Padmanabhipatti used to intervene in the dispute regarding possession of land between them and the accused persons and supported the claim of Brij Kishore and other accused persons, therefore, the possibility that Padmanabhipatti was falsely involved in the case could not be ruled out. The complainant did not adduce any evidence to show that he was detained by the police under 151, Criminal Procedure Code proceedings. The manner in which the incident of the night of 2-9-1993 has been described by the witnesses, it does not appear to be reliable in the light of existing enmity between the two parties. P.W. 2 Sukbariya, wife of Munsa, has deposed that she had not gone to lodge the report next day after the occurrence of the night, whereas P.W. 3 Tijiyabai, the mother-in-law of Sukbariya, deposed that her daughter-in-law had gone to Police Station and lodged the report on the next day morning. Sukbariya stated that in the night, accused P. P. Singh and Brij Kishore had come and kicked their door, whereas Tijiyabai stated that Sukhdev had also come with the aforesaid two persons. The learned trial Court after due appreciation of evidence held the evidence of prosecution witnesses unreliable in this regard. Even on appraisal of evidence by me, I do not find the view taken by the trial Court to be perverse or unreasonable.

Learned Counsel for the petitioner placing reliance on *Shambhu Vs. State of Madhya Pradesh*, submitted that when there is perverse finding based on erroneous appreciation of evidence and a serious miscarriage was caused, the High Court had ample power to reverse the finding. However, in the same para, the Apex Court held that if two views were possible and the trial Court had taken a reasonable view and acquitted the accused, the High Court in appeal cannot interfere with such finding. The aforesaid view has been taken by the Apex Court in an appeal against acquittal whereas the present case is the revision by the private party against the judgment of acquittal, the scope of interference wherein is all the more narrow.

In *Thankappan Nadar and Others Vs. Gopala Krishnan and Another*, the Apex Court affirming the view taken in *Vimal Singh Vs. Khuman Singh and Another*, reiterated the view about the scope of revision against the order of acquittal:

In *Vimal Singh v. Khuman Singh* this Court after considering various decisions, observed as under : (SCC pp. 226-27, para 9)

9. Coming to the ambit of power of the High Court u/s 401 of the Code, the High Court in its revisional power does not ordinarily interfere with judgments of acquittal passed by the trial Court unless there has been manifest error of law or procedure. The interference with the order of acquittal passed by the trial Court is limited only to exceptional cases when it is found that the order under revision suffers from glaring illegality or has caused miscarriage of justice or when it is found that the trial Court has no jurisdiction to try the case or where the trial Court has illegally shut out the evidence which otherwise ought to have been considered or where the material evidence which clinches the issue has been overlooked. These are the instances where the High Court would be justified in interfering with the order of acquittal. Sub-section (3) of section 401 mandates that the High Court shall not convert a finding of acquittal into one of conviction. Thus, the High Court would not be justified in substituting an order of acquittal into one of conviction even if it is convinced that the accused deserves conviction. No doubt, the High Court in exercise of its revisional power can set aside an order of acquittal if it comes within the ambit of exceptional cases enumerated above, but it cannot convert an order of acquittal into an order of conviction. The only course left to the High Court in such exceptional cases is to order retrial.

In the present case also, I do not find any procedural illegality or manifest error of law in the order of acquittal passed by the trial Court.

In the result, I find no merit in this revision and the same is dismissed.