

(1967) 10 GAU CK 0001
In the Gauhati High Court

Paokhohen Kuki and Others	Vs	APPELLANT
Tongkhohen Kuki and Another		RESPONDENT

Date of Decision : 06-10-1967

Acts Referred:

General Clauses Act, 1897 — Section 13
Penal Code, 1860 (IPC) — Section 441, 447

Citation : (1969) CriLJ 989

Hon'ble Judges : C. Jagannadhacharyulu, J.C.

Bench : Single Bench

Judgement

C. Jagannadhacharyulu, J.C.

1. This is a petition filed u/s 439, Cr. P.C. to revise the judgment of the Assistant Sessions Judge, Imphal in Criminal Appeal Case No. 35/1964/9/65 Dated 23-12-1965 upholding the conviction of the petitioners u/s 447, I.P.C. and sentences that they should pay fine of Rs. 50/- each or suffer R. I. for 50 days imposed by the Magistrate Second Class, Sadar Hills, Kangpokpi in Criminal Case No. 9 of 1964 on his file.

2. One Tongkhohem and other by name Tonkhai of Motbung village filed a joint complaint before the Magistrate Second Class. Sadar Hills at Kangpokpi, Manipur, u/s 447, I.P.C. against the petitioners alleging that the petitioners trespassed into the complainant's paddy fields in Molbung village in March, 1964 and constructed dwelling houses thereon and that they are liable to be punished u/s 447, I.P.C.

3. The Magistrate took the case on file by treating the complaint petition as having been filed by one person only, namely, Tongkhohen. After trial, he found the petitioners guilty of the offence of criminal trespass u/s 447, I.P.C., convicted them thereunder and sentenced them to pay fine of Rs. 50/- each or in default to undergo R. I. for 50 days.

4. The petitioners filed an appeal in Criminal Appeal No. 35/1964/9/65 on the file

of the Assistant Sessions Judge. But, the appeal was dismissed. Hence the present Criminal revision petition,

5. The first contention of the petitioners' counsel is that the Magistrate should not have taken cognizance of the offence as the complaint petition was filed jointly by two persons. There is divergence of opinion as to whether a joint complaint can be filed by two or more persons. Vide Note 19 at page 1372 of AIR Commentaries on the Criminal Procedure Code -- Volume I. 1965 edition. Vide also Note 10 page 32 of Sohoni's Criminal Procedure Code -- Volume I --1965 edition. The High Courts of Calcutta, Madras and Kerala held that a joint complaint by two or more persons is not contemplated by the Criminal Procedure Code. But, a contrary view was taken by the Chief Court of Oudh in AIR 1942 407 (Oudh) The Court held that the definition of the word "complaint" in Section 4(1)(h), Cr. P.C. is silent on the point whether a joint complaint by more than one person can be filed or not, that the fact that Section 200 refers to a "complaint" in the singular is of no significance, because by virtue of Section 13, General Clauses Act the words in singular in fill the Central Acts and Regulations include the words in "plural" and vice versa unless there is anything repugnant in the subject or context and (hat there is nothing repugnant in the subject or context of Section 200, Cr. P.C. to the application of that principle. In Chullikana Shambatta and Others Vs. Cherakoodlu Narayana Bhatta and Others, it was held that Section 13 of the General Clauses Act (Act 10 of 1897) does not mean that words in the singular shall "exclude" the singular. In the present case, however, it is not necessary to decide this question, though there is much substance in the view taken by the Chief Court of Oudh. For, the learned Second Class Magistrate took the complaint petition on his file by treating it as filed by one person only, namely, Tongkhohem. The procedure adopted by him cannot be said to be irregular.

6. The second contention of the learned Counsel for the petitioners is that no offence u/s 447, I.P.C. was made out on the evidence and that the petitioners should not have been convicted thereon. The evidence of P. Ws. 1 and 2 (Tongkhohem and Mangkhohen) shows that the land in question called "Sepai camp" was originally claimed by the Forest Department but that the villagers of Motbung reclaimed it and started forest cultivation in 1960, that the Forest Department filed a Criminal Case against two villagers of Motbung in Forest Case No. 36 of 1960 and that they were convicted. Their evidence further shows that, however, the villagers of Motbung continued to be in possession of the disputed land, that in 1963 the petitioners trespassed into the land, that the villagers of Motbung filed a Criminal Case No. 2 of 1963 in the Court of the S. D. C., Sadar Hills against the villagers of Saitu Pangmol and Saitu Santing, but that the Parties entered into a compromise and that the accused in that case were acquitted on the basis of the compromise. Ext. A/1 is the order of the S. D. C., Sadar, acquitting the accused in that case in terms of compromise. Ext. A/2 contains the terms of the compromise between the parties. It shows that the land surrounded by Tuibong on the Northern side. D. M. road on the eastern side,

Songkodung on the southern side and Sepai Camp Koudeeh range on the Western side was to be owned by the villagers of Motbung. The upper portion, namely, the western side from Sepai Camp Kouchung range was agreed to be enjoyed by the party of the accused in that case. Thus, Sepai camp was agreed to be enjoyed by the complainant's party in the present case. But, however, the evidence of P. Ws. 1 and 2 (Tongkhohem and Mangkhohen) is that again in 1964 the petitioners trespassed into the disputed land and constructed huts.

7. The case of the first petitioner is that he did not trespass into the land, but that he was permitted by the party of P. W. 1 (complainant) to occupy it. The case of the other petitioners is that the land in question belonged to P. W. 1 (Paolen), said to be the village Chief of Saitu and that he permitted them to occupy it. D. W. 1 (Paolen) purported to support their case.

8. Both the Courts below were justified in believing the evidence of P. Ws. 1 and 2 (Tongkhohem and Mangkhohen) and in rejecting the evidence of D. W. 1 (Paolen) as false. For. Exls. A/1 and A/2 amply prove the truth of the version of P. Ws. 1 and 2 (Tongkhohem and Mangkhohen).

9. It is clear from the evidence that the petitioners trespassed into the land to oust the complainant forcibly and by intimidation. Their intention was to intimidate the complainant and thereby compel him to give up possession and are therefore guilty of the offence of Criminal trespass within the meaning of Section 441, I.P.C. Vide Vangaveti Narayana and Another Vs. Madar Khan, The petitioners could not be said to have exercised any bona fide claim of right, because Exts. A/1 and A/2 negative their bona fides. As such, this is a clear case of criminal trespass by the, petitioners and they are liable to be convicted and punished u/s 447, I.P.C. The fine imposed by the trial Court and the sentence of imprisonment awarded to each in default of payment of the fine cannot be said to be excessive, in view of the circumstances of the case.

10. There is no substance in the revision petition and it is accordingly dismissed.