
(1969) 02 PAT CK 0014

In the Patna High Court

Case No : Criminal Rev. No. 1315 of 1968

Puranmasi Khojawar and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 17-02-1969

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 225, 353

Citation : (1969) 17 BLJR 534

Hon'ble Judges : Kanhaiyaji, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Kanhaiyaji, J.—The petitioners were convicted under Sections 147 353 and 225 of the Indian Penal Code and sentenced to rigorous imprisonment for six months each on each count. The learned 1st Additional Sessions Judge at Motihari who heard the appeal filed by the petitioners confirmed the convictions but in view of the fact that the petitioners had been sentenced u/s 147 Indian Penal Code, their sentences under Sections 353 and 225, Indian Penal Code, were set aside. The rule is directed against this order passed by the lower appellate court.

2. The prosecution case, in brief, is that there was an agrarian trouble in village Pakkaul and a Magistrate was deputed there with armed force. On the 9th February, 1963 at about 9 A.M. the said Magistrate received a written report from one Jamuna Prasad, the manager of Binod Kumar Verma, stating that there was an apprehension of a breach of the peace in the village. The magistrate went to the place and took action u/s 144 of the Code of Criminal Procedure. In spite of promulgation of the order u/s 144 of the Code of Criminal Procedure the villagers were ready to commit a breach of the peace. The magistrate with the armed party proceeded towards the field and saw the villagers collected there. On the arrival of the magistrate and the armed force the villagers including males and females retreated except five females. When the five females refused to leave the place the magistrate gave order to the lady havildar to arrest those five

females. The arrested five females were being taken to the camp on a trailer. On the way about 150 persons armed with deadly weapons and brick-bats surrounded the magistrate and his party. The magistrate declared the mob unlawful and asked them to disperse. The mob did not disperse and started brick-batting. They forcibly rescued the females. Thereupon the magistrate ordered arrest of the members of the unlawful assembly and the police arrested the petitioners out of that mob. It was alleged that members of the mob snatched away lathi of a constable and assaulted the Sub Inspector and the Circle Inspector of Police by brickbats.

3. Mohammad Idris, the Sub Inspector of Police at Gaunaha recorded his own fardbeyan, drew up a first information report and started investigation. On completion of the investigation, the Sub Inspector submitted charge sheet against the petitioners, The Subdivisional Magistrate took cognizance of the case and transferred it to a Munsif Magistrate for disposal.

4. The petitioners pleaded not. guilty. Their case was that they had been falsely implicated in this case out of enmity with Sub Inspector Mohammad Idris and Assistant Sub Inspector Nirsu Narain Singh. On a consideration of the evidence on the record and circumstances of the case, both the court? below held that the prosecution has succeeded in proving the case satisfactorily and the defence version of the case that they had been falsely implicated could not be accepted.

5. Two main points have been pressed by learned Counsel for the petitioners in support of the rule. In the first place he contends that the order u/s 144 of the Code of Criminal Procedure was not properly promulgated in accordance with the provisions of the Code of Criminal Procedure and he further contends that the order itself is invalid as it is of general nature. Reliance was placed by Mr. Pandey on the decisions in Bhagubhai Dwarkadas v. Emperor AIR 1914 Bom 198; In Re: D.V. Belvi, and Bhagwati Prasad and Others Vs. Emperor, . Sub-section (3) 01 Section 144 of the Code of Criminal Procedure runs as follows:

An order under this section may be directed to a particular individual, or to the public generally when frequenting or visiting a particular place.

In the above cases it was laid down that an order prohibiting the public generally does not conform to the requirements of this sub-section and is beyond the powers of a magistrate. To adopt this view would, I consider, unduly narrow and restrict the operation of Section 144 in a way not contemplated by the legislature when framing the section. This sub-section has nothing to do with the nature of the order but is merely one of the four sub-sections which refer to the manner of promulgation and to the duration of an order under Sub-section (i). This view finds support from a decision In Re: Madan Kishore and Another, .

6. It was then contended that the order under Sub-section (3) of Section 144 of the Code of Criminal Procedure was improper in the circumstances of the case. A proper order to be passed by a magistrate should have been under sub-Sees. (1) and (2) of Section 144 of the Code. I do not find any substance in this point

urged by Mr. Pandey. The magistrate was concerned with maintenance of peace in the village and was not concerned with the individuals. I do not find from, the judgment of the lower appellate court that there was any bona fide dispute on the part of the petitioners concerning the land in respect of which the occurrence is alleged to have taken place.

7. It was then argued on behalf of the petitioners that the arrest of the females was not legal and, therefore the charge u/s 225 Indian Penal Code, must fail. The charge u/s 225 Indian Penal Code, will have application when rescue is made from any custody in which a person is lawfully detained. In this case, it cannot be disputed that the magistrate had full authority to arrest the petitioners when being so commanded, they did not disperse. Section 127 of the Code of Criminal Procedure read with Section 128 of the Code give powers to command any unlawful assembly likely to cause disturbance of the public peace to disperse and if the command is not obeyed, the magistrate or the police officer is empowered to arrest the person or persons who formed part of it

8. It was next contended that the conviction of the petitioners u/s 147 of the Indian Penal Code is illegal in absence of allegations and a finding of overt acts on their part. Mr. Pandey has submitted that there is no evidence on the record as to who threw brick-bats, who rescued the five females. Therefore, according to him, the conviction of the petitioners u/s 147 Indian Penal Code, is erroneous and unsustainable in law. Both the courts below have considered this aspect of the case. There can be no doubt that the petitioners had taken part in the occurrence. They were arrested on the spot and the evidence of all the prosecution witnesses including the magistrate is that the petitioners were taking leading part in the mob. In this situation even if I exclude the evidence of P.W. 20, Sub Inspector Mohammad Idris and P.W. 9 Assistant Sub Inspector Nirsu Narain Singh who are said to be inimical towards the petitioners, I find sufficient evidence on the record in support of the prosecution case that the petitioners formed an unlawful assembly the common object of which was to obstruct the public officer, to assault the police party and to rescue the arrested persons. Therefore, in my opinion, the petitioners have been rightly convicted under Sections 147 225 and 353 of the Indian Penal Code.

9. Lastly, it has been submitted that the sentences passed by the courts below were too severe. In the circumstances of this case where the petitioners took law in their own hands and disturbed the peace and tranquillity of the locality, I do not think that the sentences passed against them are severe.

10. In the result, the application fails and the rule is discharged.