

(1997) 08 RAJ CK 0039

In the Rajasthan High Court

Case No : Criminal Miscellaneous Petition No. 1006 of 1996

Raj Bahadur Singh and Others

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 13-08-1997

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 100, 173, 482

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 147, 148, 149, 323, 427

Citation : (1997) 3 RLW 1656 : (1997) 2 WLN 288

Hon'ble Judges : Amaresh Kumar Singh, J

Bench : Single Bench

Judgement

Amaresh Ku. Singh, J.—Heard the learned Counsel for the petitioners and the learned Public Prosecutor.

2. This petition u/s 482 Cr.P.C. is directed against the order dated 25th September, 1996 passed by the learned Civil Judge (Jr. Div.) & Judicial Magistrate, Degana in C.R. No. 140/1996, Police Station, Thanwala, by which order the learned Magistrate took cognizance of the offences on the basis of the report submitted by the police under Sub-section (2) of Section 173 Cr.P.C.

3. The relevant facts are as below:

4. One Shivraj filed a first information report at Police Station Thanwala alleging therein that agriculture fields bearing Khasra No. 323 (measuring 5 bighas), No. 322 (measuring 3.5. bighas and 4 biswa), No. 305 (measuring 15 bighas and 12 biswa), No. 309 (measuring 4 bighas and one biswa), and No. 314/1 (measuring 20.5 bighas and one biswa), and No. 329 (measuring 2.5 bighas) came to his father's possession in a partition, which took place between his father and uncle. The deed of partition was executed on stamp-paper and the same was signed by Shri Shriram. According to allegations made in the first information report after the partition of the land. Punaram developed the dishonest intention and he persuaded complainant's grand father to execute a sale-deed in favour of

Rajbahadur Singh and others. Notwithstanding the execution of the sale-deed, the agricultural fields mentioned above continue to remain in possession of the complainant. It was further alleged in the first information report on 27th November, 1995 that Rajbahadur Singh, Punaram accompanied by 30-40 other persons entered the above mentioned fields with a view to take unlawful possession thereof by use of force and wanted to dispossess the complainant. It was also mentioned in the first information report that a case was pending in the Court of Sub-divisional Officer against the mutation entries made in the revenue record.

5. On the basis of the first information report, the police registered a case under Sections 147, 447, and 427 IPC. Investigation was conducted and charge-sheet was submitted in the Court of learned Civil Judge (Jr. Div.) & Judicial Magistrate, Degana. On the basis of the charge-sheet submitted by the police the learned Judicial Magistrate took cognizance of the offences under Sections 147, 148, 149, 447, 427 and 323 IPC vide order dated 25th September, 1996.

6. Feeling aggrieved by the order dated 25th September, 1996, the petitioners have filed this petition u/s 482 read with 100 Cr.P.C. and prayed that the order taking cognizance of the offences be quashed and set-aside.

7. The learned Counsel for the petitioner has submitted that after the execution of the sale-deed in favour of the petitioners, necessary entries were made in the revenue record showing the petitioners as the Khatedars of the land and that in fact the petitioners are in possession of the lands with effect from the date of the execution of the sale deed in their favour and the allegation made by the complainant that he was in possession of the fields on the date of alleged occurrence is false. Regarding the statements of witnesses, who can give ocular evidence about the possession of the parties on the fields in dispute, the learned Counsel for the petitioner has submitted that most of these witnesses belong to the village of the complainant, and, therefore, they have not stated the truth and given false statements in favour of the complainant. The learned Counsel for the petitioner has further submitted that a presumption should be drawn on the basis of the entries of the revenue record that these are the petitioners who are in possession of the land in dispute and if that presumption is drawn, the allegations made by the complainant in his first information report on the statements will have to be regarded as false.

8. The learned Public Prosecutor has refuted the above arguments.

9. The crucial question is whether in a petition u/s 482 Cr.P.C this Court can enter into the disputed questions of fact at this stage. I am afraid that Section 482 Cr.P.C. cannot be so stretched as to enable this Court to decide the disputed questions of fact at this stage when even the charges have not been framed.

10. It would be useful to point out that the definition of expression "proved" and "disproved" as given in Section 3 of the Evidence Act requires that before the Court forms any opinion, all the matters brought to the notice of the court should

be considered. It means that unless the court has before it all the relevant matter (facts) which the parties may bring to the notice of the Court in accordance with law, the finding about a question of fact cannot be given in a conclusive manner. It is, because of this that during the hearing, an opportunity is to be given to the parties to produce all such evidence as they may be advised to produce before the Court either in support of their case or in rebuttal. It further explains, why the disputed questions of fact cannot be decided prematurely, though for the purpose of disposing of interlocutory applications, opinion about prima facie case may have to be formed at interlocutory stages.

11. For the reasons mentioned above, the prayer to quash the order by which cognizance was taken in this case by the learned Judicial Magistrate cannot be accepted at this stage because it would be premature to form any opinion about the questions of fact at this stage.

12. For the above reasons, the petition is not maintainable. However, it may be made clear that the petitioners shall be at liberty to produce such documentary or oral evidence as they may be advised to produce, in accordance with law before the lower Court. If such evidence is produced before the learned lower Court by the petitioners before the framing of the charge or at any stage subsequent thereto, it is expected that the same shall be taken into consideration by the learned Judicial Magistrate.

13. With the above observations, the petition is hereby disposed of.