

(1958) 07 GAU CK 0005
In the Gauhati High Court

Soram Parijat Singh and Others

APPELLANT

Vs

Thongram Meri Singh and Another

RESPONDENT

Date of Decision : 23-07-1958

Acts Referred:

Penal Code, 1860 (IPC) — Section 297, 441, 447

Citation : (1960) CriLJ 631

Hon'ble Judges : J.N. Datta, J.C.

Bench : Single Bench

Judgement

J.N. Datta, J.C.

1. This is a petition in revision, which I End must be accepted. The petitioners were tried and convicted u/s 447, I.P.C, and sentenced to pay a fine of Rs. 20/- each. Their petition to the Sessions Judge to refer the matter to this Court was rejected.

2. The dispute relates to a grazing ground in the village to which the parties belong. On that grazing ground grow shrubs also which are used as fuel. It is an admitted fact and was also admitted before me that this grazing ground stands on the khas land of the Government and was declared and recorded as grazing ground in the past by the order of the Government, and the villagers were also given the right to take shrubs growing on it for their personal use. The prosecution case was that on 8-1-56, the petitioners, under colour, of a permit issued by the Forest Department in respect of Kainching Open Reserve, cut and removed 35 cart-loads of shrubs from this grazing ground, and assaulted the complainant and his party, when they protested.

3., The learned Magistrate found that the permit did not cover the area of this grazing ground and therefore the petitioners were guilty of criminal trespass. It appears that the case proceeded on the assumption that it was a case of joint ownership and possession and the action of the petitioners being wrongful, they had committed an offence punishable u/s 447, IPC

4. It is clear from the language of Section 441, which defines criminal trespass that possession contemplated under that Section must be actual physical possession, and persons who, merely have a right to graze cattle on another's land or to take fuel growing on it for their personal needs, cannot be said to be in such possession or to own the property. It seems to me that persons entitled to rights of easement or other incorporeal rights cannot be said to be persons in possession of the property within the definition of an offence of criminal trespass. It must therefore be found that the offence of criminal trespass punishable u/s 447, IPC was not established against the petitioners.

5. Reliance was placed on two cases reported In Emperor v. Rain Prasad ILR 33 All 773 and In the matter of Mahomed Hakim Khan ILR 3 Mad 178, but they are not in point, inasmuch as, in both the cases co-owners were involved, and the offence concerned was one u/s 297, IPC Under that Section the word "trespass" is clearly used in a wider sense, and covers not only criminal trespass as defined in Section 441, but also an ordinary act of trespass, and that meaning is clear from the use of the words "any trespass" as against "criminal trespass" in Section 447.

6. The result is that the convictions and sentences of the petitioners are set aside, and they are acquitted. Fines if recovered shall be refunded to them forthwith.