
(2012) 08 KAR CK 0171
In the Karnataka High Court
Case No : Criminal Petition No. 484 of 2008

Sri M K Prem Kumar and Others

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 08-08-2012

Acts Referred:

Penal Code, 1860 (IPC) — Section 143, 147, 427, 447

Citation : (2012) 08 KAR CK 0171

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : C.V. Nagesh, assisted with K.R. Lankesh, for the Appellant; P. Karunakar, HCGP, for the Respondent

Final Decision : Allowed

Judgement

V. Jagannathan

1. The petitioners seek setting aside the order dated 7.9.2007 passed by the learned J.M.F.C. III Court, Mysore, directing the case to be registered against the petitioners for the offences punishable under Sections 143, 147, 447, 427 read with 149 of the I.P.C. The case of the prosecution in short is that, a suo motu complaint was lodged by the Sub-Inspector of Police, Law & Order, Nazarbad Police Station, Mysore, to the effect that the petitioners herein had trespassed into the land which was allotted to Mysore Diocesan institution and the petitioners had destroyed the shed meant for the watchman and also damaged the hollow bricks and thereby caused loss of Rs. 500/-.

2. Learned senior counsel Shri C.V. Nagesh for the petitioners submits that the land in question is a place where war memorials have been erected in memory of the soldiers and the first petitioner herein is one such person whose forefathers' memorial is erected in the said land and he, along with other petitioners, therefore, were present in front of the land in question to prevent the members of the Mysore Diocesan institution to commit any trespass into the land and

secondly, the dispute concerning the ownership of the land was also taken before the civil court and the first petitioner and others, who were the plaintiffs, succeeded in their suit before the trial court and though the lower appellate court had remanded the case to the trial court, the petitioners were successful in getting the judgment of the lower appellate court rendered in R.A. Nos. 234 and 786/2009 being stayed and consequently, the judgment and decree of the trial court in favour of the plaintiffs, therefore, came to be in force.

3. Under the above circumstances, it is not the petitioners who trespassed into the land in question but, on the other hand, the Mysore Diocesan institution had committed the act of trespass by putting in the materials in the land in question despite the judgment of the lower appellate court being stayed by this court in M.S.A. No. 81/2010 as well as in R.S.A. No. 5010/2010. The further submission made is that, even the panchanama drawn at the place of incident reveals that the shed was intact and so were the hollow bricks and, therefore, the material placed by the prosecution itself does not make out a case against the petitioners nor the ingredients of the offences alleged can be said to have been made out, when the petitioners had a judgment and decree of the civil court in their favour.

4. Having thus heard the learned senior counsel and also the learned Government Pleader for the respondent-State and on a perusal of the material placed and more particularly, in the light of the civil suit being decreed in favour of the first petitioner and others, who were the plaintiffs, and this court, in the aforementioned R.S.A. and M.S.A., having stayed the judgment of the lower appellate court, the petitioners cannot be said to have committed the act of trespass into the land in question. As far as the damage to the shed is concerned, the panchanama drawn mentions that there was a shed in existence at the land in question.

5. For the above reasons, the petitioners have made out a case for interference by this court u/s 482 of the Cr.P.C. as the allegations in the complaint do not make out necessary ingredients of the offences alleged. Accordingly, the petition is allowed and the proceedings pending before the court below stands quashed.