
(1995) 08 BOM CK 0050
In the Bombay High Court
Case No : Criminal App. No. 3 of 1994

State of Goa

APPELLANT

Vs

Pedro Lopes

RESPONDENT

Date of Decision : 03-08-1995

Acts Referred:

Penal Code, 1860 (IPC) — Section 441, 447, 506

Citation : (1996) CriLJ 256

Hon'ble Judges : T.K. Chandrashekhara Das, J

Bench : Single Bench

Advocate : G.U. Bhobe, P.P, for the Appellant; Nitin Bodke, for the Respondent

Judgement

1. The State is appellant herein. It challenges the judgment in Criminal Case Number 251/86/B on the file of Judicial Magistrate, First Class, Panaji, dated 25th October 1993.

2. The charge against the respondent before the Magistrate was that on 28-7-1986, at about 16 hours, the respondent has committed a criminal trespass into the property of Mr. Tito Menezes under Survey No. 2/3 and and threatened the labourers therein with dire consequences if they did not stop the work. Accordingly, the accused was charged under Sections 506 and 447 of IPC. On the basis of this charge, the trial was proceeded and at the end of the trial the Magistrate found the respondent was not guilty and he was acquitted.

3. The learned Public Prosecutor attacked the judgment on various grounds he has taken me to the evidence and the complaint made before the Magistrate. P.W. 1 admits in his chief examination that property dispute in respect of which offence is alleged to have been committed is going on between him and the respondent. He admitted that a civil dispute is pending in respect of the property between him and the respondent.

4. In order to sustain a prosecution u/s 447 - Criminal trespass - it is common knowledge that the accused must be shown to have committed the offence as

defined u/s 441 which says "Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property". Therefore, it is needless to say that in order to sustain a prosecution, it should be established before the Court that the complainant is entitled to have an unquestionable possession of the property in exclusion of the entire cleared at the time of trespass alleged. Admittedly, in this case, such a possession cannot be presumed or established. It is admitted case that a genuine dispute is going on between the parties and a suit is pending. Apart from that, there was no evidence made out in this case even by the de facto complainant himself. He, in his cross-examination admits that he has not seen the incident nor he heard the threats. He had the information about the trespass only from his other labourers. The criminal action complained of was that the respondent has removed the cap of one of the labourers and threatened. These facts have not been proved.

5. P.W. 2 is one of the labourers who was examined before the Court below. He says that he was working in the compound from 9.00 a.m. to 6.00 p.m. and in the evening one boy came there and objected to their doing any work in the property and caught hold of the cap of one Tukaram and threw him down. P.W. 2, however, could not say whether that boy was the accused who was present in Court at the time of his examination. Therefore, apart from the legal infirmity which I pointed out earlier even in evidence, the prosecution witness did not spell out anything which discloses the offence against the respondent. In view of these facts before this Court I do not find any reason to interfere with the judgment of the Court below.

6. I confirm the judgment and dismiss the Appeal. There shall be no order as to costs.

7. Appeal dismissed.