
(2002) 06 SHI CK 0017
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 310 of 1996

State of H.P.

APPELLANT

Vs

Amar Singh and Others

RESPONDENT

Date of Decision : 04-06-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 154, 156(3), 173(1), 190(1)(c)
Penal Code, 1860 (IPC) — Section 147, 148, 323, 325, 447

Citation : (2002) CriminalCC 159

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : M.C. Mandhotra, A.A.G, for the Appellant;

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—The seven respondents upon having been tried for the offences under Sections 147, 148, 323, 325 and 447 of the Indian Penal Code by the learned Judicial Magistrate 1st Class (II), Harnirpur, stand acquitted of such offences vide judgment dated 31.10.1997. By virtue of the present appeal, the State has assailed the acquittal of the respondents as recorded by the learned Magistrate.

2. The facts of the present case leading to the prosecution of the respondents, need not be set out in detail since the present appeal can be disposed of on a legal aspect. Suffice to say that according to the case of the prosecution, all the respondents on 27.7.1991 are alleged to have constituted an unlawful assembly with the common intention to commit criminal trespass over the land belonging to the complainant Bhangi Ram (PW 1) and further that in furtherance of such common intention they committed criminal trespass over such land and also voluntarily caused simple as well as grievous injuries to PW 1 Bhangi Ram and his son Gian Chand (PW 2).

3. The case came to be registered on the basis of the statement of PW 1

recorded u/s 154, Code of Criminal Procedure vide FIR No.40 of 1991 at Police Station, Badsar. A perusal of the record shows that after the necessary investigation, the Incharge Police Station, Badsar put up a final report u/s 173(1) of the Code of Criminal Procedure recommending the cancellation of the case on the ground that the land on which the criminal trespass is alleged to have been committed by the respondents was owned and possessed by the respondent Kashmir Singh. Admittedly, all the respondents are members of the same family. It was also reported by the Incharge of Police Station in his final report that the respondents were found to have exercised their right of private defence of property in order to protect their land.

4. On the final report having been submitted by the Incharge of the Police Station, the learned Magistrate before whom such report was submitted vide order dated 2.5.1992 did not agree with the final report submitted by him. He, therefore, directed as under:

So the report of the police for cancellation is rejected. This file be sent to SHO, Badsar to prepare the challan against the accused in proper form and also to procure medical certificates and relevant documents and thereafter present the challan against all the accused in the Court on 30.5.1992.

5. In pursuance of such directions a fresh final report u/s 173(1) of the Code of Criminal Procedure was presented to the Court by the Incharge of the Police Station for the prosecution of all the respondents for the above stated offences. Cognizance was taken by the Magistrate. The respondents were put to trial and vide the impugned judgment all the respondents were acquitted of the offences charged against them.

6. In the present appeal, a question has arisen as to whether the learned Magistrate to whom the final report with regard to the cancellation of the case was put up by the Incharge of the Police Station after having not accepted such report, could direct the Incharge of the Police Station to present a challan before him for the prosecution of the accused named therein.

7. The above question is no more res integra in view of the pronouncement of the Hon'ble Supreme Court in *Abhinandan Jha and Others v. Dinesh Mishra*, AIR 1966 Supreme Court 117.

8. In the case before the Hon'ble Supreme Court the police after having made investigation into the case, submitted a final report u/s 173(1) of the Code of Criminal Procedure for the cancellation of the case on the ground that the offence complained of was not made out. A protest was lodged by the complainant therein before the learned Magistrate, challenging the correctness of the report submitted to the Court by the police. The learned Magistrate after perusal of the police diary and after hearing the Counsel for the complainant therein and the learned Public Prosecutor did not agree with the report submitted to him by the police and after allowing the protest petition of the complainant directed the police to submit the necessary charge-sheet against the accused named therein.

9. The Hon''ble Supreme Court held that the investigation under the Code of Criminal Procedure takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected, a case is made out to place the accused before the Magistrate for trial, and the submissions of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of such opinion by the police, is the final step in the investigation and that final step is to be taken only by the police and by no other authority. It was further held that the Magistrate is not bound to accept the final report as submitted by the police when he considers the matter judicially. He can differ from the police and that the Magistrate has no power to direct the police to submit a charge-sheet when the police have submitted a final report that no case was made out for sending-the accused for trial. The functions of the Magistrate and the police are entirely different and though the Magistrate may or may not accept the report and take suitable action according to law, he cannot certainly impinge upon the jurisdiction of the police by compelling them to change their opinion so as to accord with his view. The only two options available to the Magistrate while disagreeing with the final report submitted to him by the police are either to take cognizance of the offences u/s 190(1)(c) or to order further investigation u/s 156(3), Code of Criminal Procedure.

(Emphasis supplied)

10. In the present case, the learned Magistrate exceeded his jurisdiction in directing the police to present the necessary charge-sheet against the respondents for their trial of the offences under Sections 147, 148, 323, 325 and 447, Indian Penal Code. As such, the case against the respondents, is liable to be quashed and set aside simply on this ground.

11. Even otherwise on merits, (sic) acquittal of the respondents as recorded by the learned Magistrate does not call for any interference. It is in evidence that the suit for possession of the land in question was filed by the respondent Kashmir Singh against the complainant PW 1 Bhangi Ram. Such suit was decreed by the learned Sub-Judge Ist Class, Hamirpur on 15.2.1986. There is also evidence that in execution of such decree, the respondent Kashmir Singh was placed in possession of the land in question. In view of the decree of the Civil Court and the fact that the possession of the land in question stood delivered to the respondent Kashmir Singh, the very case of the prosecution that the said land was in possession of PW 1 Bhangi Ram and that the respondents after having constituted an unlawful assembly committed trespass over such land and caused simple as well as grievous injuries to PW 1 and PW 2 stands falsified. Even if it be assumed that the injuries were caused by any of the respondents, the respondents can be said to be exercising their right of private defence qua their land, the possession of which was delivered to them in pursuance of the decree passed in their favour.

12. Resultantly, the present appeal fails and the same is, accordingly, dismissed.

Bail bonds shall stand cancelled and discharged.