

Mahabir and Others Vs Rex through Shamdhari

Court: Allahabad High Court

Date of Decision: Sept. 21, 1948

Acts Referred: Penal Code, 1860 (IPC) â€” Section 352, 447, 503

Citation: AIR 1949 All 228 : (1949) CriLJ 338

Hon'ble Judges: Wanchoo, J; Agarwala, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Wanchoo, J.

This is a reference made by the Additional Sessions Judge of Banaras in respect of an order passed u/s 522, Criminal P. C.,

by a Magistrate of the Second Class of Banaras and confirmed on appeal by the Additional District Magistrate of that district.

2. The facts of the case are as follows. Plots Nos. 1160/37 and 1160/60 belonging to Raja Baldeo Das Birla were under the "cultivation of one

ShilSaran, tenant. On 30th July 1946, Baijnath and eight other accused persons forcibly ploughed the said plots. Shiamdhari Singh, servant of

Shilsaran, went to the spot and remonstrated with the accused and tried to stop them from ploughing the field, but the accused did not listen to him.

On 31st July 1946, Bhiamdhari Singh lodged a complaint against the accused charging them u/s 447, Penal Code, for having committed criminal

trespass and under s. 352, Penal Code, for having assaulted him.

3. The accused pleaded "not guilty" to the charges. Five of the accused stated that they had no concern with the plots, but the remaining four

claimed that the land had been in their possession for the last four years and that they had been paying rent to the zamindar. On a consideration of

the evidence, the learned Magistrate who tried the case found that accused (were?) guilty under u/s 447 and u/s 352, Penal Code, and convicted

and sentenced them to pay certain amount of fine. He also passed an order u/s 522, Criminal P. C., for the restoration of the possession over the

plots to the complainant. The accused appealed against this order.

4. The Additional District Magistrate of Banaras, who heard the appeal held that the plots had been in possession of Shilsaran and that the

appellants had committed criminal trespass by entering upon them and cultivating them, and that, therefore, the charge u/s 447, Penal Code, was

fully proved. He further held that the charge u/s 352, Penal Code, was not established. He observed as follows ;

As regards Section 352, Penal Code, Shyatmdhari Singh, P. W, 1 has simply stated that when he tried to stop them the accused got ready to fight.

Jawahir P. W. 2 has deposed that when Shyamdhari Singh went and tried to Stop them they did nit listen. Basawan P.W. 3 has deposed that

Shyamdhari Singh went and protested but the accused refused to listen. No further overt act has been assigned to the appellants and thus, in my

opinion, no case u/s 352, Penal Code, has been made out against them.

He, therefore, acquitted the accused of the charge u/s 352, Penal Code. He, however, maintained the order of the learned Magistrate under-S.

522, Criminal P. C, for delivery of possession of the plots to the complainant.

5. The accused then filed an application in revision before the learned Sessions Judge of Banaras. The learned Additional Sessions Judge, who

ultimately heard this revision petition, in making a reference to this Court hag expressed the opinion that since the accused were acquitted of the

offence u/s 352, Penal Code, and no overt act amounting to use of force or show of force or criminal intimidation was found to have been

committed by the accused, no order u/s 522, Criminal P. C., could have been passed. In support of this view he has relied upon a decision of this

Court in Jamuna Das v. Emperor 1944 ALJR 432 : AIR 1945 ALL. 20 : 46 CrILJ 211).

6. Section 522, Criminal P, C., as amended by the Code of Criminal Procedure (Amendment) Act (XVIII [18] of 1923), runs as follows:

522 Whenever a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation and it appears to the

Court that by such force or show of farce or criminal intimidation any person has bean dispossessed of any Immovable property, the Court may, if

it thinks fit, when convicting such person or at any time within one month from the date of the conviction order the person dispossessed to be

restored to the possession of the same.

The section speaks of an offence attended by criminal force or show of force or criminal intimidation and it also speaks of a person having been

dispossessed by such force or show of force or criminal intimidation. Two questions, therefore, arise ,in this case : (I) What is the exact meaning to

be attached to the words ""attended by"", whether they mean that force of show of force or criminal intimidation should be an ingredient of the

offence or whether it is enough if force or show of force or criminal intimidation accompanies or immediately or shortly after, follows the

commission of an offence ? (2) What is the exact significance of the words ""show of force""?

7. In our opinion criminal force or show of force or criminal intimidation as mentioned in this section need not necessarily be an ingredient of the

offence at all. The words "attended by" should include an act done simultaneously with or immediately after another act. We speak of evil

consequences attending a course of conduct. There the evil consequences follow the coin-so of conduct. So, if the commission of an offence is

immediately or shortly after followed by force or show of force or criminal intimidation the case will be covered by this section.

8. Criminal force, show of force and criminal intimidation are all defined in the Penal Code, The Criminal Procedure Code is in pari materia with

the Penal Code, be to deal with crimes. While the Penal Code deals with the substantive law of crimes, the Criminal Procedure Code deals with

the adjective or procedural law of crimes. They are to be supplementary to each other. They must, therefore, be construed, be far as possible, in a

manner that will make them consistent with each other. "Criminal force" or "show of force" must, therefore, be ascribed the same meaning as they

bear in the Penal Code. Use of force is defined in 8. 349 and use of criminal force is defined in 8. 350 and criminal intimidation is defined in

Section 503, Penal Code. They all deal with the use of force to a person and not to any inanimate object. We, therefore, think that Use of

criminal force or show of force, or criminal intimidation must all be with reference to a person and not with reference to property.

9. Use of criminal force means actual use thereof; criminal intimidation connotes a threat of use of force to another person, Show of force,

therefore, must be something different from these two. It may fall short of the use of force or of a threat to use force. We think if the accused or his

accomplices having entered upon the land do not quit the land when the true owner protests against such unauthorised entry and are ready to fight,

the offence can be said to have been attended by "show of force." Show of force may consist in the physical presence of the accused, his servants

or companions in such a way that the true owner is put to the fear that if he tried to regain possession by force he will be met by force. On similar

facts, this was the view taken by one of us in criminal Ref. no. 502 of 1947, Sheo Narain Tiwari v. Rex decided on 22nd July 1948 In the present

case one of the witnesses stated that the defendants were ready to fight, another stated that they did not listen to the protest of the complainant, the

result was that the complainant had to go away quietly leaving the accused in possession of the field. The complainant would not have gone away

quietly unless he feared use of force if he took physical action to recover the land. In such circumstances we have no doubt that there was a show

of force. We think that dispossession of the complainant had not become complete till the complainant appeared on the scene, protested and had

to go away. This was the view of Allsop J. in *Mt. Maharani Vs. Emperor*, . The learned Sessions Judge has relied upon a single Judge case of this

Court *Jamuna Das Vs. Emperor*, . In that case after the accused had committed the trespass the complainant went to him and protested

whereupon the accused became ready to fight and did not leave the room. The learned Judge held that this subsequent protest by the complainant

and his coming away because the accused was ready to fight did not bring the case within 8. 522, Criminal P, C, because the offence of trespass

had already been completed before this show of force was made. We respectfully differ from the opinion of the learned Judge. We think that

where shortly after the commission of the offence, the true owner becoming aware of the trespass committed in his absence, goes to the spot to

regain possession of his land and is prevented from" doing so, by the accused showing readiness to fight if attempt were made to regain

possession, the case would be covered by Section 522, Criminal P. O., and an order for restoration of possession can be passed by the Court.

10. We therefore reject this reference.