
(1951) CriLJ 495

Andhra Pradesh High Court

Case No: None

Venkatkishenrao and
Others

APPELLANT

Vs

State of Hyderabad

RESPONDENT

Date of Decision: Sept. 4, 1950

Acts Referred:

- Penal Code, 1860 (IPC) - Section 379

Citation: (1951) CriLJ 495

Hon'ble Judges: Shripatrao, J; S.A. Khan, J

Bench: Division Bench

Judgement

Shripatrao, J.

1.This is a revision petition against the order of the Session Judge at Marangal dismissing the 2nd appeal instituted before him by the revision petitioners and confirming the judgment: and order of the District Judge.

2. Mr. Jahangir Ali, the learned Advocate for the petitioners, argued that the charge of. theft u/s 315, Hyderabad Penal Code, cannot be sustained against the accused as they had cut and gathered the standing crops of paddy on survey No. 162 under a claim of title. He has cited 28 Deccan L. R. 234 and as Deccan L. R. 278 and also Bhim Bahadur v. Emperor AIR 1922 Pat. 265: (21 Cri. L.J. 374) and AIR 1927 404 (Nagpur)

3. He argued that the complainant, Venkatamma at whose instance the police started the prosecution is related to the petitioners and there was a suit for partition in the civil Court and certain other proceedings before the Revenue Authorities. In this connection this Court had on the Civil Side pronounced a judgment dated 17th Dai 1356 Fasli, by which it was decided that the appeal of Venkatamma should be allowed and that she is entitled to 1/4th share under the terms of the compromise and that her claim with regard to lands is established as per terms of the compromise. There was a list of Immovable property

attached to the compromise and the survey number which is now under dispute in this revision was entered in that list, The offence is alleged to have been committed on 4th Bahaman 1356 Fasli i. e., about two weeks after the judgment of the High Court by which the claim of the petitioners had been negatived. Under the circumstances, we are of opinion that the claim of the petitioners having been decided by a competent Court of law against them it cannot support their action of cutting the standing crops and they cannot escape liability. In our opinion, such a claim should not be a mere pretext for protection against criminal liability. In *Bhim Bahadur v. Emperor* AIR 1922 pat. 266: (21 Cri. L.J. 374) it was held that where there was a clear plea of bona fide title in a case u/s 379, Indian Penal Code, it takes the case out of the province of the criminal Court and the Magistrate should leave the parties to have their rights determined by the civil Court. It is clear that this ruling is not helpful. There is already in this case a decision by the highest civil Court and therefore the plea of the accused cannot be regarded as bona fide.

4. In *Champati v. Government* 28 Deccan L. R. 234, it was held that the dishonesty of the accused must also be proved while convicting the accused of theft. This ruling is equally inapplicable. It is clear that the intention of the accused before us in cutting the paddy was to cause wrongful loss to the complainant and wrongful gain to themselves, and therefore it cannot but be said that they have acted dishonestly. In the ruling cited in this volume at p. 278 it was held that it is the duty of the civil Court to decide the question of ownership and title to land. This ruling therefore has no bearing as the civil Court has in this case already decided the question of title.

5. In AIR 1927 404 (Nagpur) it was held that seizure of a thing in the assertion of a bona fide claim of a right does not amount to an offence in the absence of an element of dishonesty. The lower Court has held in this case that the element of dishonesty is proved. I do not see any reason to disagree with the opinion of the lower Court.

6. In conclusion this revision petition fails and is therefore dismissed.

7. S. A. Khan, J. I have also examined the record carefully ; a bona fide claim of title is indicative of absence of mens rea, but this general rule is subject to the claim being bona fide. It is a hard exercise of faith to believe that the acts of revision petitioner were bona fide after this Court's decision against him. Two Courts have found the facts against him, and therefore the cutting of the crop cannot be gain said. The eases cited do not help. I dismiss the revision petition.