Atul Singh and Others Vs The State and Others

Court: Calcutta High Court

Date of Decision: Aug. 18, 1983

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€" Section 221, 379, 426, 447
Penal Code, 1860 (IPC) â€" Section 379, 426, 447

Citation: 88 CWN 336

Hon'ble Judges: J.N. Chaudhuri, J; B.C. Chakrabarti, J

Bench: Division Bench

Advocate: Asis Kumar Sanyal and Ananda Mohan Biswas, for the Appellant;Mrityunjoy Goswami and Sisir Kumar Bhuniya for the Opposite Party No. 2, for the Respondent

Judgement

B.C. Chakrabarti, J.
This is a revisional application against an"" appellate order passed by the learned Sessions Judge, Midnapore affirming

an order of conviction and sentence passed by the Judicial Magistrate, Fourth Court, Midnapore in G.R. Case No. 1341 of 1978 convicting the

petitioners under Secs. 379 and 447 of the Indian Penal Code.. The petitioners were sentenced to undergo R.I. for one month each under Sec.

379 I.P.C. and to undergo R.I. for 15 days each for the offence under Sec. 447 I.P.C. The sentences are to run concurrently.

2. On an appeal being preferred by the petitioners the learned Sessions Judge affirmed the findings and dismissed the appeal both as regards the

conviction as also sentence.

3 The prosecution case in brief was that plot no. 217 of mouza Aste was in the possession of a deity of which the de facto complaintant was the

shebait in possession. The prosecution allegation was that the petitioners forming themselves into an unlawful assembly trespassed into the plot on

23.4.1978 and cut and took away some branches of Babla trees standing thereon.

4. The two courts below have disposed of the matter in the manner we have already indicated. The learned Advocate appearing for the petitioners

contends that the ingredients of the charge under Sec. 379 I.P.C. were not proved in so far as there was no dishonest intention of taking away the

branches of the trees allegedly cut by the petitioners without the consent of the de facto complainant and that therefore no charge under Sec. 379

I.P.C. could be sustained on the facts proved. He further contends that the land on which the trees were said to have been standing was not really

in the possession exclusively of the de facto complainant but was in the possession of the villagers at large. This, however, is a question of fact and

in view of the positive findings of the two courts below, we do not think we would be justified in disturbing that finding. But so far as the other point

is concerned, even if there was no element of intention to dishonestly remove or take away the trees or even to sever branches of the trees with the

dishonest intention, there can be no dispute that the act found to have been proved by the two courts below constituted the offence of mischief.

The learned Advocate for the petitioners was fair enough not to dispute that the evidence at the most makes out an offence under Sec. 426 I.P.C.

Even if the land was in possession of the villagers at large, even then the act done by the petitioners as has been found by the two courts below

would still amount to commission of the offence of mischief.

5. Sec. 221 of the Code of Criminal Procedure provides for situations when a bona-fide doubt may arise as to what offence has really been

committed. Sub-section (1) says that if a single act or series of acts is of such a nature that it is doubtful which of several offences the facts which

can be proved will constitute, the accused may be charged with having committed all or any of such offences, and any number of such charges may

be tried at once. Sub-section (2) says that if in such a case the accused is charged with one offence, and it appears in evidence" that he committed

a different offence for which he might have been charged under the provisions of sub-section (1), he may be convicted of the offence which he is

shown to have committed, although he was not charged with it. In the instant case we have already indicated that the offence strictly is one of

mischief and on the facts alleged and proved the petitioners could have been convicted under Sec. 426 I.P.C. even though no charge was framed

in that behalf. The petitioners cannot complain that a conviction under Sec. 426 in the circumstances would cause prejudice.

6. Having heard the learned Advocates for the petitioners, the de facto complainant and the State we convert the conviction of the petitioners

under Sec. 379 I.P.C. to a conviction under Sec. 426 I.P.C. The conviction under Sec.447 I.P.C. however is affirmed.

7. The case has been pending for a long time and considering the nature of the offence and the nature of the dispute between the parties, we think

the ends of justice would be met if a sentence of fine only is passed instead of a sentence of rigorous imprisonment. A sentence of imprisonment in

the circumstances of the case on the contrary is likely to embitter the relations between the parties which seems to be already strained. We,

accordingly, sentence each of the petitioners to pay a fine of Rs. 100/- each under Sec. 447 I.P.C. and also to pay a fine of Rs. 100/- each under

Sec. 426 I.P.C. In default of payment of fine under each count they shall suffer rigorous imprisonment for 15 days each. The fine is to be paid

within two months from today and fine, if realised, 1/4th of it is to be paid to the de facto complainant.

The revisional application is thus disposed of.

Jitendra Nath Chaudhuri, J.

I agree.