

Raghubansh Lal

Vs

The State of U. P.

Criminal Appeal No. 94 of 1955

(B. Jagannath Das, Syed Jafar Imam, P. Govinda Menon, J. L. Kapur JJ)

20.02.1957

JUDGMENT

KAPUR J. -

This is an appeal by Special leave under Art. 136 of the Constitution of India against the Judgment of the Allahabad High Court confirming the conviction of the Appellant Raghubansh Lal under s. 218 of the Indian Penal Code.

The offence for which the appellant was tried was, that being a Patwari of village Arazi Mafi Pandai and thus a public servant, he "framed the khasra of 1358 F in respect of plots Nos. 170 and 74/1 of village Arazi Mafi Pandai", which he knew "to be incorrect with intent to cause or knowing to be likely that he would thereby cause an undue loss to Smt. Mahura Kunwar."

The facts out of which this appeal has arisen are these. Two brothers, Mahadeo and Sahdeo, who were members of a joint Hindu family owned certain plots of land. Mahadeo died leaving a widow Basera Kunwar, a son Damodar Pande and a daughter Mahura Kuer. Sahdeo died leaving a widow Sundra Kuer. On the death of Damodar Pande, one Ram Sewak Pande brought a suit against Smt. Basera Kunwar and Smt. Sundra Kuer for possession of zamindari property including sir and sayar left by Damodar Pande which was dismissed. On the death of Basera Kunwar, Adit Pande son of Ram Sewak and one Ganga Pande got their names mutated in regard to this property.

Smt. Mahura Kuar then brought a suit for possession of the estate left by Smt. Basera Kunwar against Adit Pande and Ganga Pande which was decreed on August 1, 1941. On May 31, 1943, Smt. Mahura Kuar obtained possession through Court of this estate which included the two plots Nos. 170 and 74/1.

On February 25, 1950, Mahura Kuer made an application to the Sub-Divisional Magistrate for taking proceedings under s. 145 of the Criminal Procedure Code against Adit Pande and Ganga Pande. The Magistrate ordered the attachment of the land including the two plots Nos. 170 and 74/1, and it is alleged that possession of these two plots was given to Shubh Karan as sapurdar or custodian. The property remained under attachment from March 15, 1950, to December 18, 1950, which would comprise a part of 1357 F and a part of 1358 F.

On December 18, 1950, the proceedings taken by the Magistrate ended in favour of Mahura Kuar with the finding that her possession had been established. Adit Pande and Ganga Pande were restrained from interfering with the possession of the lady; and it was ordered that the attachment should end and the possession of the plots of land in dispute be handed back to Smt. Mahura Kuer.

The opposite party took a revision to the District Magistrate which was dismissed on March 28, 1951, and it is alleged that actual possession was delivered in April, 1951. From December 1950 to April 1951, the delivery of possession remained stayed under the District Magistrate's order.

On July 31, 1951, Smt. Mahura Kuar filed the present complaint in the Court of the Judicial Magistrate at Ghazipur under s. 218 of the Indian Penal Code against the present appellant in which after reciting the various relevant facts she alleged that the accused who was a Patwari of the village had deliberately made wrong entries in regard to the plots Nos. 170 and 74/1 and in the remarks column had entered the name of Adit Pande as being in possession, and thus he had committed an offence under s. 218 of the Indian Penal Code. The case was committed to the court of Session where in support of the prosecution Smt. Mahura Kuar herself appeared as witness No. 1 and her case was supported by two other witnesses, namely, Gouri Shankar P.W. 2 and Naresh P.W. 3. The accused produced in defence Adit Pande, D.W. 1 and Ram Swarup D.W. 2.

The accused's plea in the Sessions Court was that he had come to know from Shubh Karan Chowkidar that Smt. Mahura Kuar had won the case under s. 145 of the Criminal Procedure Code, but in spite of the order of the Magistrate he found the possession "on the spot" to be of Adit Pande, that he did not act according to the order of the Magistrate because he did not receive any such order and that he did not find Smt. Mahura Kuar in whose favour the order was passed by the Magistrate to be in actual possession.

The learned trial court found that the accused had made incorrect entries knowing them to be incorrect with intent to cause "gain to Adit Pande and loss to Smt. Mahura Kuar." He, therefore, convicted the accused and sentenced him to one year's rigorous imprisonment and a fine of Rs. 200 or in default 4 months rigorous imprisonment.

The High Court confirmed the trial court's decision on the ground that the delivery of possession to the complainant Smt. Mahura Kuar was proved by the statements of the lady herself and of Gauri Shankar and Naresh Gadaria, who had supported the statement of Mahura Kuar and had deposed that Shubh Karan sapurdar had sown barley in one field and paddy in the other and that actual physical possession was delivered to her in April 1951. On a consideration of the evidence the High Court held that the entries were incorrect and had been made with a view to injure Mahura Kuar.

Rule 60 of the U.P. Land Records Manual deals with preparation of Khasras. The form of the khasra contains columns showing the name of the cultivator, the name of the sub-tenant or tenants and entries relating to crops etc. The rule requires that the entries shall be made in accordance with the actual facts and provides that the Patwari is responsible for all entries and he must satisfy himself of the facts by inquiry from the persons concerned as well as by field inspection and complete the khasra by April 30th. In the remarks column - and this is shown by the order of commitment - the entry of the years 1347 F and 1358 F was "qabiz badastur" (possession as before.) In coming to the finding of incorrectness of the entries in the khasra with intent to cause injury to Smt. Mahura Kuar, the Courts below have taken into consideration the proceedings under s. 145 of the Criminal Procedure Code. Although the finding of the Magistrate in those proceedings was in favour of Smt. Mahura Kuar, the land in dispute had been attached and had been given for cultivation to Shubhkaran Chowkidar, and even according to prosecution case the actual physical possession did not pass to Smt. Mahura Kuar till April 1951. The sapurdar, Shubhkaran, himself has not been examined as a witness, may be due to the then existing dispute between Mahura Kuar and Shubhkaran as to the produce of the land in dispute for the period of his custodianship. Even though the possession of the disputed plots is stated to have been given to the complainant in April

1951, she was not in actual physical possession before that date, i.e., during the period the land was under attachment.

For the purposes of this case, the prosecution had to prove :-

- (1) that the accused knowingly framed the record in an incorrect manner; and
- (2) that the accused did this with the intent to cause or with knowledge that he would thereby cause loss or injury to the public or to Smt. Mahura Kuar.

It is true that the High Court found that the accused knew of the litigation between Mahura Kuar and Adit Pande and in spite of this he had made an incorrect entry. But in order to sustain the conviction it is not sufficient that the entries are incorrect, it is essential that the entry should have been made with the intention mentioned in s. 218 of the Indian Penal Code. Direct evidence proving the necessary intention is, in this case, lacking and the circumstantial evidence is too meagre to support any safe conclusion as to the intention with which the appellant made the entry complained of. His case was that the sapurdar, Shubhkaran, never got possession from Adit Pande. Shubhkaran was not a witness, may be for the reason already stated, and it was contended that in the absence of the testimony of Shubhkaran the case of the prosecution cannot be held to have been proved at least it is not free from doubt. But the courts below have considered this fact and taking all the circumstances into consideration have held in favour of the complainant on the question of possession.

The question still remains whether the incorrect entries were made with the intent to cause or knowing it to be likely that the accused will thereby cause loss or injury to the complainant. It is difficult to see how any wrong entry in regard to the year 1358 F could cause any loss to the complainant. In this case the intention has to be gathered from the act of the accused. The entry could not have been intended to create evidence for being used against the complainant in the proceedings under s. 145 Criminal Procedure Code, because according to the evidence on the record the entries were made somewhere in March and this could not have helped Adit Pande, as the magistrate had already decided the proceedings under s. 145 Criminal Procedure Code in December 1950, and had ordered possession to be delivered to the complainant; and, therefore, this entry could not affect the result of the proceeding under s. 145 Criminal Procedure Code.

Mr. Mathur founded his case also on s. 16 of the U.P. Zamindari Abolition and Land Reforms Act, (U.P. Act I of 1951), which provided that a person who was recorded as an occupant of the land for the year 1356 F and who, on the date mentioned in the section was in possession of the land, shall be deemed to be a hereditary tenant of the land. But the entry complained of is not for the year 1356 F but for the year 1358 F, and this entry would not have been of any avail to Adit Pande for the purposes of s. 16 of the Zamindari Abolition Act. In the circumstances of the case it cannot be said that an offence under s. 218 has been committed by the appellant as in our opinion the prosecution has failed to prove the necessary criminal intention.

In these circumstances, we would allow the appeal, set aside the order of conviction and acquit the accused. As a consequence the bail bond shall stand cancelled.

Appeal allowed.

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