

SUPREME COURT OF INDIA

Mahant Abhey Dass

Vs.

S. Gurdial Singh

Crl.A.No. 98 of 1968

(S. M. Sikri, C.J.I., P. Jaganmohan Reddy and I. D. Dua, JJ.)

11.02.1971

JUDGEMENT

SIKRI, C. J.:-

1. This appeal by special leave is directed against the judgment of the Circuit Bench of the Punjab High Court at Delhi (Narula J.) reversing the order dated December 6, 1965 of the learned Magistrate and the judgment dated March 1, 1966 of the Additional Sessions Judge, and directing that all the respondents be discharged under sub-section (2) of Section 253 of the Code of Criminal Procedure in respect of the offences alleged by the appellant before us. In order to appreciate the points it is necessary to state the facts. The Appellant is the Muktar-e-Am (General Attorney) of Mahant Santokh Dass. He filed a complaint under Sections 447/379 and 428/34, I. P. C. The allegations in brief were that Mahant Santokh Dass was the owner as Dholidar and occupancy tenant of the entire land comprising in Khasra No 129, Civil Station, Delhi, measuring 27 Bighas and 14 Biswas. There is a Gurdwara known as Gurdwara Majnu-ka-tilla which was built in another portion of Khasra No 129 covering an area of 4 Bighas and 7 Biswas and was managed by the accused Sardar Gurdial Singh, Manager, Gurdwara Prabandhak Committee, Sardar Gulab Singh, President Gurdwara Prabandhak Committee and Sardar Santokh Singh, Secretary, Gurdwara Prabandhak Committee. There were certain Sewadars which the appellant cited as accused without naming

them. The appellant recited the previous litigation between the parties and alleged that the committee having lost every where in Court ultimately took to the law of jungle and to wreak their vengeance and to create evidence in their favour accused Nos. 1, 3 and 4 along with accused No. 2, in furtherance of the common intention, in the absence of the owner and the appellant on the morning of March 29, 1964 by illegally trespassing on the said orchard employed coolies and some servants of the Gurdwara and totally destroyed it and closed watering well and levelled the whole thing to the ground and they illegally and dishonestly removed the trees from the orchard and took them into possession.

2. It was further alleged that the accused have no interest or title in the land which they trespassed illegally and destroyed the whole Orchard. The complainant gave a lengthy statement before the Court of the S. D. M., Delhi. He alleged that the land was in possession of his ancestors and continued to be in his possession. He relied on copies of the Khasra Girdawari relating to the land in dispute and Fard Zamabandi. He gave a statement in support of the complaint. He produced some witnesses including P. W. 5 Pheru Mal Jain, Patwari, who deposed that the land measuring 27 Bighas and 8 Biswas was under the possession of Mahant Santokh Dass and the land measuring 4 Bighas and 7 Biswas was under the possession of Gurdwara Prabandhak Committee. We need not refer to the rest of the evidence.

3. The A D. M. after having gone through the enquiry report and the evidence on record came to the conclusion that there was a prima facie case under Sections 427/447/379/34 I. P. C. against the accused Gur Dayal Singh, Santokh Singh and Tara Chand only. He sent the case to the Court of Shri C. N. Narula, Magistrate 1st Class, for disposal according to law.

4. On December 6, 1965 an application was put in under Section 253 (2), Criminal Procedure Code, for discharging the accused persons. The main ground taken was that the decree passed in favour of Mahant Santokh Dass by Shri R. L. Lamba, Sub-Judge had been set aside in appeal by Shri P. N. Thukral, Additional District Judge, who had remanded the case to the trial Court. This judgment of Shri Lamba was one of the documents relied upon by the complainant to show his title. It was further stated in this application that the dispute was prima facie of civil nature and the complaint had been filed to harass the accused. The Court on December 6, 1965 wrote a short order which reads as follows:-

"Heard the parties. This Court is not to sit in judgment over the findings of learned Civil Judge or Addl. S. Judge but is only concerned with possession and criminal trespass over such possession of land in dispute. The matter of title is to be decided upon by competent Civil Courts. I see no reasons to discharge the accused at this stage or to stay the proceedings also- verbally requested by counsel for the accused. Application is rejected. Case to proceed with prosecution evidence today".

5. The accused filed a revision petition before the Additional Sessions Judge, Delhi but that was

dismissed on the ground that there was no ground for the discharge of the accused. As far as the title was concerned the learned Addl. Sessions Judge observed :

"The Criminal Court has, as a matter of fact, to record its own findings on the points disputed before it and the discretion of the learned Magistrate in not staying the proceedings in the complaint to await the decision in the civil suit cannot be interfered with".

6. The accused then filed a revision before the High Court. The learned Judge allowed the petition on the ground that the real dispute was regarding the title to the land on one part of which the Gurdwara was situated and on the other part the alleged criminal trespass was committed by the accused. Although the Judge said that the question of title was not directly relevant, he seems to have decided the case on the question of title for he referred to the previous history of the litigation between the parties and observed :

"The suit filed by Mahant Santokh Dass for a declaration to the effect that he was in possession of the land in dispute, of which possession was being claimed by the Gurdwara Prabandhak Committee, has been dismissed. In the face of the decree of the civil Court in the civil suit of Mahant Santokh Dass, it is clear that the complainant had no right to eject the petitioners or to exclude them from the land in question".

7. Then the learned Judge observed :

"According to the complainant's own case made out in the complaint, he was not in actual possession of the property at the time of the commission of the alleged offence".

8. We have looked into the complaint and there is no evidence in support of this observation of the learned Judge.

9. The learned Judge further observed :

"I have also scanned through the evidence so far recorded at the trial of this case. Even if the allegations made therein are deemed to be true, they do not appear to disclose the commission of any of the offences with which the petitioners are sought to be charged. The charges against the petitioner were therefore, clearly groundless and the learned Magistrate, in my opinion, unjustifiably

declined to exercise his jurisdiction under Section 253 (2) of the Code of Criminal Procedure in refusing to discharge the accused".

10. We are unable to appreciate this conclusion of the learned Judge. If the allegations are true there is no doubt that the accused have committed the offence charged against them of course, it is another matter if the allegations are ultimately proved not to be true.

11. We have deliberately not referred to the previous litigation between the parties for any observation which we may make may affect either the civil suit or the fate of this case. It seems to us that the High Court while saying that it was not concerned with the title had somehow felt that the title rested with the accused-respondents.

12. The learned Counsel for the respondent No. 1 S. C. Malik tried to persuade us to go into the question of title and he said that the question of possession was dependent on title. He referred to Ex. P 11, an extract from Khasra Girdawari, and wanted us to infer from it that Khasra Girdawari had been prepared on the basis of title and not on the basis of actual possession. On behalf of respondent No 2 Bakshi Gurcharan Singh argued that the revenue records were false and the litigation showed that the title was with the accused. Mr. Harbans Singh appearing for Respondent No. 3 added that the complaint was not filed immediately.

13. We need not discuss these points in detail because it might possibly prejudice respondents' case but it seems to us that the High Court erred in discharging the accused under Section 253 (2), Criminal Procedure Code. As held by the learned Sessions Judge a prima facie case has been made out and the accused must stand trial.

14. In the result the judgment and order of the High Court is set aside and we direct that the trial should proceed as expeditiously as possible.

Appeal allowed.