

ALLAHABAD HIGH COURT

Dalganjan Koeri

Vs.

State (Allahabad)

Criminal Revn. No. 1274 of 1954
(Mehrotra and Sahai, JJ. and Then Oak, J.)

04.04.1956

JUDGMENT

Mehrotra, J.

1. The following order of law has been referred to us by the learned Single Judge :-

"Whether Section 188, Indian Penal Code, is applicable to orders passed in judicial proceedings by civil, revenue or criminal courts ?"

The facts giving rise to this revision are that Srimati Manbasia, Param Koori, Shakal Koori, Dal Ganjan Koeri and Prikhka Koeri are alleged to have cut and removed the crop of plot No. 485/1, 25 decimals. A suit under Section 60, U.P. Tenancy Act was filed by Ram Krishun Lal and others against Srimati Manbasia and others which was pending in the Court of the Judicial Officer in respect of plot No. 485/1, area 25 decimals. In that suit an order was passed for the attachment of the crop on the 16th January, 1951 and the crop was ordered to be attached through a commissioner Sri Tribhuwan Tewari. An order of injunction was served by the commissioner on the parties not to damage the crop in question. Three persons were appointed caretakers of the crop and they made a complaint on the 5th March, 1951 that the present applicants, in disobedience of the order of injunction, cut away She crop. On these facts the applicants were prosecuted under Sections 379 and 188, Indian Penal Code.

The Magistrate convicted the applicants and the conviction was confirmed in appeal.

2. In revision, before the learned Single Judge, one of the points taken by the applicants was that the applicants could not be convicted under Section 188, Indian Penal Code for breach of the order passed by the revenue court. Section 188, Indian Penal Code does not apply to orders passed in judicial proceedings by civil, revenue or criminal courts. As this question is of general importance, the learned Single Judge has referred this question to a Bench.

3. Section 188, Indian Penal Code provides :

"Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both."

It is contended by the applicants that before Section 188, Indian Penal Code could be applied, there must be an order promulgated by a public servant lawfully empowered to promulgate such order the disobedience of which causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury to any person lawfully employed. Unless these three conditions exist, Section 188 cannot apply. In effect, the argument is that Section 188 Indian Penal Code does not contemplate disobedience of orders passed in judicial proceedings by civil, revenue or criminal courts. It contemplates orders passed by public functionaries, the disobedience of which is likely to result into annoyance or injury or tends to cause danger to human life, health or safety or causes or tends to cause a riot or affray. It is contended by the State Counsel that there are no such limitations placed on the nature of the order the disobedience of which has been made penal under Section 188 Indian Penal Code. A civil or criminal court is as much a public servant as any other public officer and any orders passed by them in judicial proceedings are in effect promulgated and the courts are empowered to promulgate such orders. Any order of injunction is likely to result into annoyance to the party at whose instance the injunction order has been obtained and consequently such a case will be covered by Section 188, Indian Penal Code. It is necessary to examine the cases referred to on this point by the parties. The earliest case referred to by the applicants is In the matter of the petition of Chandrabanta De, 6 Cal 445. In this case a mandatory injunction was issued by the District Judge directing the opposite-party to refrain from excluding the petitioner from possession over a tank as joint sharer. A breach of this order was committed by the party against whom the injunction had been issued and he had been prosecuted for an offence under Section 188, Indian Penal Code. It was held by the Calcutta High Court that Section 188, Indian Penal Code contemplates orders made by public functionaries for public purposes and not an order made in a civil suit. This case was subsequently followed by the Calcutta High Court and the latest decision of that Court is in *Quinn v. Keshab Chandra Mukherjee*¹, To the same effect is the view of the Madras High Court reported in *Pommani Chintakath Mammali v. Kutti Ammu*², It was held in this case that the word "promulgated" in Section 188, Penal Code refers to orders issued under the Code of Criminal Procedure and not to judgments and orders of civil courts. To the same effect is the decision of the Bombay High Court reported in *Mallappa Mallappa Tavargi v. Emperor*³, A learned Single Judge of this Court in *Bishan Datt v. Emperor*⁵, held that orders contemplated by Section 188, I. P. O. are orders made by public functionaries in the public interest. The Section cannot refer to an order made in judicial proceedings. Under Rule 15 of the Kumaun Nayabad Rules the Deputy Commissioner in charge of

the Kumaun Division passed an order directing certain persons to demolish and remove a cowshed which they had built on certain benap land.

¹ AIR 1949 Cal 349

³ AIR 1915 Bom 22

² AIR 1916 Mad 640 (1)

⁴ AIR 1948 All 50

The proceeding which resulted in this order was instituted upon a report made by one Badri Dutt. The applicants being aggrieved by that order filed a regular suit in the civil court for a declaration that they were entitled to occupy the land in dispute as a valid extension. Their suit was dismissed by the first court but was decreed on appeal by the Deputy Commissioner. The Board of Revenue, however, finally dismissed the suit. The Sub-Divisional Officer, Ranikhet issued a notice to the applicants giving them three weeks' time for carrying out the order which had originally been made.

The prosecution case was that the applicants failed to comply with that order and thereupon a complaint under Section 188, Indian Penal Code was lodged against them who failed to comply that order and then they were prosecuted under Section 188, Indian Penal Code and it was observed by this Court considering the language of Section 188 that the word "promulgated" in Section 188 could not refer to an order made by a public servant in course of a civil proceeding between two parties. This interpretation was further strengthened by the fact that the disobedience of the 'order promulgated by a public servant', which is made punishable by Section 188, must be a disobedience which causes or tends to cause obstruction, annoyance or injury, to any person lawfully employed. The orders contemplated by Section 188 can be orders made by public functionaries in public interest. Another case of this Court is *State v. Sm. Tugla, reported in*⁵ This was a Government Appeal against an order of acquittal under Section 188, Indian Penal Code. There was a difference of opinion between two Judges and the matter was sent to a third Judge for decision. In that case an order under Section 145, Criminal Procedure Code had been infringed and the question which arose was whether an order under Section 145, Criminal Procedure Code is an order promulgated within the meaning of Section 188, Indian Penal Code. The matter was finally decided on the facts of that case and the opinion of the majority of the Judges was that an order under Section 145, Criminal Procedure Code was an order the breach of which was punishable under Section 188, Indian Penal Code as to the parties to that order but this decision did not deal with the question of orders passed in judicial proceedings by civil, revenue or criminal courts.

The State Counsel very strongly relied upon a case of the Patna High Court reported in *Rupan Singh v. Emperor*⁶, That was an order passed under Section 144, Criminal Procedure Code and there can be no dispute that the breach of an order passed under Section 144, Criminal Procedure Code is punishable under Section 188, Indian Penal Code. An order passed by a competent court in a dispute between the parties cannot be said to have been promulgated by a public servant empowered to promulgate such an order. The disobedience of an order promulgated by a public servant, which has been made punishable by Section 188, Indian Penal Code must be a disobedience which causes or tends to cause obstruction, annoyance or injury or risk of obstruction, annoyance or injury to any person lawfully employed. This also suggests that orders contemplated under Section 188, Indian Penal Code are orders made by public functionaries in the public interest. The disobedience of any order passed in favor of a party to the litigation by a

court may result in annoyance to the party in whose favor it has been passed, but it cannot be said that it necessarily causes or tends to cause obstruction or annoyance or injury to any person. We have carefully considered the language of the Section and we are of opinion that Section 188, Indian Penal Code does not contemplate orders passed by civil or revenue courts

⁵1955 All 423 ((S) AIR V 42)

⁶ AIR 1844 Pat 213

in judicial proceedings. Any breach of such orders can be adequately dealt with under the provisions of the Code of Civil Procedure but cannot be said that they are orders promulgated within the meaning of Section 188, Indian Penal Code, the disobedience of which would result into obstruction, annoyance or injury.

4. Our answer, therefore, to the question referred to us is that orders passed in judicial proceedings by civil, revenue or criminal courts are not governed by Section 188, Indian Penal Code. On the receipt of the answer from the Division Bench (Mehrotra and Sahai, JJ.), Oak, J. delivered the following :

ORDER

This is a revision application by Dalganjan and three others who have been convicted under Sections 188 and 379, Indian Penal Code. Each of them has been fined Rs. 50/- under Section 188, Indian Penal Code and has been fined Rs. 100/- under Section 379, Indian Penal Code. According to the prosecution, there was a case before a revenue court under Section 60 of the U.P. Tenancy Act. Ram Kishan Lal and others were the first party, and Smt. Manbasia and others were the second party to that litigation. In January 1951 the revenue court attached certain plots, and appointed three persons as custodians of the crop standing in the plots. In March 1951 the four applicants and Smt. Manbasia took away the standing crop from one plot. The court, therefore, filed a complaint against the five accused under Sections 379 and 188, Indian Penal Code. All the five accused pleaded not guilty. It was said that the custodians themselves were responsible for cutting the crop. The learned Magistrate accepted the prosecution evidence, and held that the crop had been cut by the accused.

All the five accused were, therefore, convicted under Section 379, Indian Penal Code for theft of the crop and under Section 188, Indian Penal Code for disobedience of the Court's order. Four accused were sentenced as mentioned above. Smt. Manbasia was let off under the U.P. First Offenders Probation Act. An appeal by Parma and three others was dismissed by the learned Sessions Judge of Ballia. Parma and others have now come to this Court in revision.

6. When the revision application came up before me on the previous hearing, it was urged before me by the learned counsel for the applicants that Section 188, Indian Penal Code, is not applicable to orders passed by courts in judicial proceedings. I referred this question of law to a Division Bench. The question has now been answered by a Division Bench of this court. The decision of the Division Bench is that, orders passed in Judicial proceedings by civil, revenue or criminal courts are not governed by Section 188, Indian Penal Code. In view of this legal

position, the applicants 'conviction under Section 188, Indian Penal Code must be set aside.

7. We are thus left with the conviction of the applicants under Section 379, Indian Penal Code. It was urged that the conviction for theft also is incorrect. Reliance was placed upon "*Queen-Empress v. Mekan Abayya*"⁷, In that case there was execution of a money decree against the accused. The crop belonging to the accused was attached by the Court Amin. An agent of the decree-holder was appointed to watch the field till the harvest.

⁷22 Mad 151

After a few days the accused cut away the crop. He was, therefore, prosecuted for theft. It was held that the accused was not guilty of theft but of the offence of dishonestly removing the property under section 424, Indian Penal Code. It was observed :

"No doubt when in the present case the crop was cut, the Court or its officer had the right to at once take possession of it, but the right to possess is not the same thing as actual possession, The actual possession remained with the judgment-debtor."

It, therefore, appears that the basis of that decision was that, the accused person remained in actual possession all along. So he could not be convicted of theft. The agent of the decree-holder was merely appointed to watch the field till the harvest. In the present case the property was attached in January 1951. Three persons were appointed custodians. The accused persons cut away the crop in March 1951 it does not appear that the responsibility of the custodians was confined to the mere watching of the crop. In such cases the custodian has the authority to reap the crop when it is ready. It, therefore, appears that in the present case the crop was in the possession of the three custodians on behalf of the court from January to March 1951. Since possession passed from the accused to the custodians, the cutting of the crop by the accused in March 1951 was dishonest.

8. In *Chunnu v. King-Emperor*⁸, certain moveable property belonging to the judgment-debtor was attached in execution of a decree. That property was placed in the custody of another person. The judgment-debtor took away the property and appropriated it. It was held that the offence committed was theft.

9. In the present case Smt. Manbasia was a party to the litigation before the revenue court. Other accused were related to her. The learned Sessions Judge found that all the accused knew of the promulgation of the order. The accused removed the crop knowing about such an order. So the act committed by the accused was dishonest. All the five accused were, therefore, rightly convicted under Section 379, Indian Penal Code for theft. This was a case where a crop was cut by a party in spite of attachment by the court. The fines imposed upon the four applicants for theft are not unduly heavy.

10. The revision application is partly allowed. The applicants 'convictions and sentences under

Section 188, Indian Penal Code, are set aside, and they are acquitted of that charge. Their convictions and sentences under Section 379, Indian Penal Code shall stand. The stay order dated 14-9-1954 is withdrawn.

Revision partly allowed.

⁸⁸ All LJ 656