

# CALCUTTA HIGH COURT

Bata Krishna Ghose

Vs.

State (Calcutta)

Criminal Revn. Case No. 40 of 1957

(Debabrata Mookerjee, J.)

07.03.1957

## ORDER

### **Debabrata Mookerjee, J.**

1. These four petitioners have been convicted by a Magistrate at Krishnagar under Section 447 of the Indian Penal Code and each sentenced to pay a fine of Rs. 50, in default, to suffer rigorous imprisonment for twenty days. There was an appeal against this order of conviction and sentence which was, however, dismissed by the Assistant Sessions Judge, Nadia.

2. Complainant Sudha Krishna Ghose is a brother of the petitioner Bata Krishna Ghose while the other three petitioners are sons of Bata Krishna. It is said that as a result of an amicable partition, the complainant came to hold plot No. 73 of Mouza Char Manikdihi under Khatian No. 30 separately. On the 18th June, 1954, the petitioners are said to have trespassed upon the plot and ploughed up the land on which Arhar was sown. The allegation is that one or two of the petitioners carried lathis in their hands. Upon these allegations, the petitioners were charged under Section 447 of the Indian Penal Code with having committed criminal trespass on the plot in question.

3. The petitioners pleaded not guilty, and the defense case was that the land belonged to the petitioner Bata Krishna Ghosh. There does not appear to be a denial of the fact that the plot was ploughed up and Arhar sown upon it.

4. It is somewhat remarkable that the learned Assistant Sessions Judge appears to have thought that mere entry upon the land constituted criminal trespass. There is no finding recorded by him which would show that the petitioners had acted with one or other of the intents specified in Section 441 of the Indian Penal Code. That section provides inter alia that when a person enters into or upon a property in possession of another with intent to commit an offence or to

intimidate, insult or annoy any person in possession of such property, he commits the offence of criminal trespass. In order that a conviction may properly be had upon a charge of offence of criminal trespass, there has to be a finding based upon evidence to the effect that the act of trespass was committed either with intent to commit an offence or with intent to intimidate, insult or annoy any person.

5. Since the learned Judge did not think it right to record any finding whatever as regards the essential ingredients of the offence, I examined the evidence in the case in order to be able to see for myself whether there were materials on the record upon which a conviction of criminal trespass could properly be founded. I must at once say that the evidence, such as it is, falls far short of the requirements of the section. In the first place, the complainant was not there at the time when the offence was alleged to have been committed. He is a mohurir who resides at Krishnagar. It is said that he was the person in possession of the plot at the time of the occurrence. The complainant's son is said to have been present and was in fact intimidated by the petitioners when there was protest. In order that a conviction can be had, it was necessary that the person in possession, viz., the complainant, should have been intimidated, insulted or annoyed. The intent to annoy or intimidate cannot be in respect of any and every person connected with the property, but with respect only to the person in actual possession of such property. If, therefore, the complainant was not present to be intimidated, insulted or annoyed, I do not think there could be a conviction in this case unless it could be found upon evidence that there was intent to commit an offence. It was nowhere suggested in the evidence what offence, if any, the petitioners intended to commit. Could it be said that the petitioners intended to commit the offence of mischief by ploughing up the land and sowing Ahrar seeds on it? The evidence shows that at that time the land was lying fallow; it was covered with Babla plants all over. Even so, the act of the petitioners in ploughing up the land might be an unlawful act, but I do not think the act comes within the terms of Section 425 of the Indian Penal Code. That section provides,

"Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public, or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits 'mischief'. There must be the intent or knowledge on the part of the person concerned to cause wrongful loss or damage. There must be either destruction of the property or some change in the property or in its situation which has the effect of destroying or diminishing its value or utility, or in any event, the property must be injuriously affected.

6. As I have indicated above, the plot was overgrown with Babla plants, and by clearing up the plot and ploughing it up and sowing seeds on it, I do not think any loss or damage was caused to the property or any change in it or in its situation was brought about which had the effect of destroying or diminishing its utility, or the plot was otherwise injuriously affected. Assuming that the plot was in the possession of the complainant, I do not think that the elements of mischief could be said to have been established by the evidence in the case. I cannot conceive of any other

offence having been intended to be committed by the petitioners in ploughing up the land and sowing seeds upon it.

7. The learned Magistrate, however, addressed himself to the question as to whether the requisite intention was established by the evidence on the record; but he nowhere indicated whether there was intention to intimidate, insult or annoy any person or commit any offence. The Magistrate referred in an omnibus manner to the requirements of Section 441 of the Code and wound up his observations by saying that the petitioners had the knowledge that if they went to plough up the land and sow seeds, the intention on their part to annoy the real possessor of the land could be inferred. I must point out that the intention to annoy is not identical with wish or desire to annoy.

8. As was held by Sen, J., in the case of *Satish Chandra Modak v. The King*<sup>1</sup>, trespass was an offence under Section 441 of the Indian Penal Code only if it was committed with any of the intents specified in that section and proof that a trespass committed with some other object was known to the accused to be likely or certain to cause insult or annoyance was insufficient to sustain a conviction under Section 448 of the Indian Penal Code. The Code has instituted and maintained a distinction between knowledge and intention; and where the elements of the section require that a certain act has to be done with a certain intent, no conviction can be had unless the specific intent is found established on the evidence. Mere knowledge on the part of the petitioners that the result of their act is likely to cause annoyance or insult or intimidation to the complainant is, in my view, wholly insufficient to sustain a charge under Section 477 of the Code. The Court has to look to the state of the mind of the accused and to see whether his conduct is such as to lead to the inevitable conclusion that he acted with one or other of the intents specified in Section 441. That section does not speak of knowledge. It speaks only of intent either to commit an offence or to intimidate or insult or annoy any person in possession of property. It would, therefore, in my view, be utterly wrong to import the element of knowledge into Section 441 of the Indian Penal Code.

9. The Rule is accordingly made absolute. The convictions and sentences are set aside. The fines, if paid, will be refunded.

Rule made absolute.

<sup>1</sup>53 Cal WN 402 : ( AIR 1949 Cal107)