

PATNA HIGH COURT

Ram Prasad Singh

Vs

State of Bihar

(B.P. Sinha, J.)

01.04.1969

JUDGMENT

B.P. Sinha, J.

1. These two petitioners along with some other persons were prosecuted for commission of offences under various sections of the Indian Penal Code. The trial Court convicted these two petitioners under Sections 379, 427 and 447 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for three months under each "of those sections with a direction that the sentences will run concurrently. They were acquitted of the charges under Sections 143 and 342 of the Indian Penal Code. Other accused persons who were put on trial were acquitted of all the charges framed against them. On appeal, the appellate court set aside the conviction under Section 379 of the Indian Penal Code. It maintained the conviction of the petitioners under Sections 427 and 447 of the Indian Penal Code and in lieu of the sentences of imprisonment fined each of these petitioners to the extent of Rs. 200/- under Section 427 and Rs. 100/- under Section 447 of the Indian Penal Code.

2. The prosecution case was that on 26-10-1965 at about 1 P.M. when Thakur Dayal (P.W. 7) had been to Gaya Hospital for his treatment, these two petitioners along with other accused persons began to demolish the southern portion of his house which comprised of a verandah and a room. An information to this effect was given to the police station at Rafiganj which was entered in the station diary. Two constables were deputed with Jeo Narain Vishwakarma, who had given that information. They came to the place of occurrence. On arrival, they found that the house was completely demolished. Deo Lal Sao (P.W. 1) who had also gone to Gaya Hospital with Thakur Dayal on return found the house demolished and, as such, he lodged information to that effect which was, also recorded in the station diary. The next morning, that is to say, on 27-10-1965 on the strength of the aforesaid Sanha, Vindhychal Prasad Sinha, the then Officer-in-charge of the police station went to the place of occurrence and recorded Fardbeyan on the basis of which a

formal first information report was drawn up and a case was instituted with the aforesaid result.

3. The defense was that the demolished structure was on plot No. 509 which was in possession of these petitioners and the allegations of the prosecution against them was false.

4. The courts below found that the structure was standing on plot No. 509. This plot is situated just south of plot No. 510. plot No. 510 belonged to Thakur Dayal. They further found that the structure which was demolished though standing on plot No. 509 was in possession of Thakur Dayal. With, such findings they found the petitioners guilty as mentioned above,

5. It has been contended by learned Counsel for the petitioners that no offence under Section 427 of the Indian Penal Code has been made out so much so that the demolition of the wall was in any case on account of bonafide claim of right. In support of his contention learned Counsel has relied upon the decision in *King Emperor v. Balkrishna Narhar Velhankar*¹. It, however, appears that in that case, it was not laid down as a general rule that wherever there was a bonafide claim of right there could be no offence of mischief. The bona fide claim of right in pulling down the wall in that case was considered just to gather the requisite intention for constituting the offence of mischief or house trespass. That case, is, therefore, no authority for the proposition that whenever there is a dispute regarding properties there can not be any offence of mischief. The next case on which learned Counsel placed reliance is the decision in *Jang Bahadur Singh v. King Emperor*². That is a case where a suit for possession was decreed with mesne profit from the date of dispossession, pending the delivery of possession the judgment-debtor raised crops upon that very land and before obtaining the delivery of possession through court the decree-holder removed the standing crops. In that connection, it has been held that in view of the decree for possession with mesne profit the judgment-debtor will be treated as trespasser having no right either to the land or to the profits thereof, namely, the crops which he might raise thereon and if he raised....the crops the benefit of it would go to the decree-holder and as such the crops raised by the judgment debtor did not belong to him but belonged to the decree-holder, with such observation, it was held that no offence of mischief was made out. Thus it is clear that this is based upon the decree for possession with mesne profit, that is to say, on account of the decree for mesne profit, the crops that were grown over the land were held to be belonging to the decree-holder. Such is not the case with the present prosecution. The concurrent findings of both, the courts are that the structure in question belonged to Thakur Dayal and it was in his possession. These findings of the courts below have to be accepted. In that view of the matter, the two decisions cited by learned Counsel for the petitioners are of no avail.

6. The charge under Section 427 of the Indian Penal Code framed against these petitioners runs as follows:That you, on or about the same day at the same place committed mischief by

demolishing wall and damaging tiles and roofs thereby causing loss or damage to the amount of more than Rs. 100/-.If the structure belonged to and was in possession of Thakur Dayal, the demolition caused loss to Thakur Dayal. That being so by such demolition the offence of mischief is clearly made out. The intention can be gathered from the act done. Hence, in my opinion, there is no substance in the contention of learned Counsel that no offence under Section 427 of the Penal Code has been made out.

7. With regard to the conviction under Section 447 of the Indian Penal Code, however, it was argued that there was no intention to annoy any person. The charge under Section 447 of the Penal Code runs as follows:That you, on or about the same day at the same place committed Criminal Trespass by entering into the premises of Thakur Dayalji in order to commit mischief and theft.Theft story has not been believed but the commission of offence of mischief has been proved. Learned Counsel has conceded that if the offence of mischief is found to be made out in this case then certainly conviction under Section 447 of the Indian Penal Code will also stand.

8. Lastly it has been submitted that in any case there should not have been separate sentences under Sections 427 and 447 of the Indian Penal Code. The main offence that was committed was the offence of mischief. Under such circumstances, the contention that there should not have been a separate sentence for both these offences may be acceptable. Under the circumstances of the case, I would maintain the conviction of the petitioners under both these sections. The sentence of fine under Section 447 of the Indian Penal Code is, however, remitted and sentence of fine imposed under Section 427 of the Penal Code will remain. The direction given by the appellate court regarding payment of money as compensation out of the fine realised will stand. With this modification in the sentence the application in revision is dismissed.

Cases Referred.

1A.I.R. 1929 Bom. 486
21926 Pat. 244