

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRIMINAL APPEAL No. 1710 of 1999**

1. Bharat Lal son of Gangaram Yadav, aged about 25 years.
2. Kusal alias Shiv Kumar Yadav son of Gangaram Yadav, aged about 21 years.

Both resident of Village Navadih (Majgaon) District Bilaspur (MP) (Now CG).

---- **APPELLANTS**

Versus

The State of Chhattisgarh through the Station House Officer, Kota, District Bilaspur (CG).

---- **RESPONDENT**

For Appellants	:	Shri Anurag Verma, Advocate.
For respondent/State	:	Shri B.Gopa Kumar, Deputy A.G.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

11/07/2016

1. Challenge in this appeal is to the judgment dated 11.05.1999 passed by the Special Judge (Atrocities), Bilaspur in Special Case No.16 of 1998. Vide the impugned judgment, the court below has found the appellants to be guilty of having committed the offence under Section 3(1)(iv) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (for short, ST & SC Act) and have convicted them to undergo RI for six month along with fine of Rs.500/- each with default stipulation.
2. Learned counsel appearing for the appellants submits that both the appellants are real brothers and they are the son of one Gangaram who was infact the purchaser of the disputed land from the complainant

Aman Singh. He submits that it is a case where initially the appellants had purchased the land from the complainant Aman Singh and had taken possession of the said land, however, subsequently there was a proceedings drawn against the appellants by the complainant under Section 170-B of the Land Revenue Code and on 30.11.1996 an order was passed by the SDM, Kota in favour of the complainant based upon which the possession certificate (Ex. P/1) and Ex. P/2, the Panchnama, relating to possession was given to the complainant. According to counsel for the appellants initially since the appellants were occupying the land by virtue of the property having been purchased by the father of the appellants, however, subsequent to order passed by the SDM, Kota in a proceedings under Section 170-B of the Land Revenue Code, the appellants have handed over possession of the said land to the complainant Aman Singh.

3. According to Appellants, the complainant, in between, had lodged a complaint against the appellants for an offence under Section 3(1)(x) of the ST & SC Act before the Police Station Kota which was registered as Crime No.162 of 1997. He further submits that the entire case of the prosecution is devoid of merit for the reason that the prosecution has not been able to lead evidence of a single independent eyewitness by which the case of the prosecution could be established. It is further submitted that it is a case where there is no eyewitness or for that matter any evidence who has supported the case of the prosecution except for a solitary statement of complainant himself.
4. He would also submit that the very first paragraph of the deposition of

Aman Singh, PW-1, clearly indicates that he had sold the property to the father of the appellants and who had also taken possession of the same, but subsequently in a proceedings under Section 170-B of the Land Revenue Code, the possession was restored back to the complainant Aman Singh which has also been acted upon as is evident from the deposition of the complainant before the court wherein he had admitted that he is in possession of the land and has started cultivating also. According to appellant, this very fact by itself is sufficient to draw inference against the complainant Aman Singh in so far as the allegation of dispossession of his property is concerned and thus, prayed for setting aside the impugned judgment.

5. Learned counsel appearing for the State however opposes the appeal and would submit that admittedly subsequently possession has been handed over back to the complainant Aman Singh, but it is a case where admittedly at the initial stage there was a illegal possession made by the appellants over the disputed property and were cultivating the said land which would therefore squarely fall within the ambit of Section 3(1)(iv) of the ST & SC Act. Therefore, the findings of the court below cannot be said to be bad in law in any manner nor does it call for any interference and prayed for rejection of the appeal.
6. Having considered the rival contentions of either side what is an admitted position is that, from the statement of complainant Aman Singh, PW-1, in paragraph-1 he admits the fact that the disputed land was sold by him to one Gangaram i.e. father of the appellants. He also admits that later proceedings under Section 170-B of Land Revenue

Code was drawn in which order in his favour was passed by the SDM, Kota. He also accepted the fact in his evidence that he has got his land back from the possession of the appellants and is in possession and also cultivating the same. The same is also reflected from his cross examination.

7. Once when there is a categoric averment made by the complainant himself that he had initially sold the land and also delivered possession, however, subsequently in a proceedings under Section 170-B of the Land Revenue Code, he got the possession back and is in cultivating possession, in the opinion of this court, it cannot be said that the appellants had made any forceful occupation over the said land nor can be said that they had wrongfully occupied the said piece of land as there is an admission by the complainant Aman Singh himself of having sold the land to the father of the appellants in the year, 1978.
8. Thus, from the fact that initially the land was sold to father of the appellants by virtue of which they were in possession of the disputed land and even though for a particular period during the course of proceedings under Section 170-B of the Land Revenue Code the appellants had remained in possession, which ultimately they had surrendered back to the complainant Aman Singh, which is also evident from the deposition of complainant Aman Singh that he had got his land back and is in possession and cultivating the same, would sufficiently bring the case of the appellants indicating that they were not in wrongful occupation over the said piece of land and if at all they were cultivating the said land, it was by virtue of the possession of the land that they

had received by the complainant himself by virtue of sale deed made by the complainant to the father of the appellants.

9. For the foregoing reasons, in the opinion of this court, the findings of the court below to the extent of finding the appellants to be guilty of offence under Section 3(1)(iv) of ST & SC Act is not properly made out, inasmuch as, the prosecution has failed to establish the wrongful occupation of the appellants over the said piece of land.
10. Accordingly, judgment impugned dated 11.05.1999 passed by the Special Judge (Atrocities), Bilaspur in Special Case No.16 of 1998 is set aside and the appellants are acquitted of the charge under Section 3(1)(iv) of the ST & SC Act subject to compliance of Section 437-A Cr.P.C.

Sd/-
(P.Sam Koshy)
JUDGE