

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL APPEAL NO. 1719 OF 1999

Kejuram, S/o Panchram Yadav, aged about 47 years, R/o Village-Jhingatpur, P.S.- Kota, District- Bilaspur

... Appellant

Versus

The State of Madhya Pradesh (now Chhattisgarh), through Station House Officer, Police Station Kota, District- Bilaspur

... Respondent

For Appellant	:	Mr. Anurag Verma, Advocate.
For Respondent-State	:	Mr. Neeraj Jain, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

11/07/2016

1. The present appeal has been preferred against the order dated 31.5.1999 passed by the Special Judge (Atrocity), Bilaspur in Special Criminal Case No. 17 of 1998. Vide impugned order dated 31.5.1999, the Court below found the Appellant to be guilty of having committed offence under Section 3(1)(iv) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 (hereinafter referred to as 'the Act') and sentenced him to undergo R.I. for 6 months with fine of Rs.500/- and in default to pay the fine amount to undergo further R.I. for 2 months.

2. Learned Counsel for the Appellant submits that the Appellant has been wrongly convicted by the Court below inasmuch as there was no evidence whatsoever adduced by the prosecution to justify that the Appellant was wrongly in occupation over the disputed property. According to the Appellant, the impugned order is bad in law for the reason that the Court below has failed to appreciate the fact that the order on the basis of which possession was ordered to be handed over to the Complainant, Mohanlal Porte, was subject to challenge in appeal before the Court of the

Commissioner, Bilaspur and which was pending even when the matter was being heard by the Trial Court.

3. Counsel for the Appellant further submits that though the certified copy of the order and the order-sheets of the Appellate Court were produced before the Court below, it did not consider the same in its proper perspective of accepting the fact that the finding of the Sub Divisional Officer under the provisions of Section 170-B of the Land Revenue Code (hereinafter referred to as 'the Code') is still under challenge before the appellate forum and as such it cannot be said that there is a conclusive finding so far as the possession over the disputed property by the Complainant is concerned. He further refers to the finding of the Court below in the impugned order whereby he draws the attention of the Court to the fact that the property had been transferred to various persons before it came in the hands of the Appellant who had purchased it by way of exclusive sale of the property.

4. It was next submitted that until and unless it is properly and completely established that the land belonged to the Complainant, Mohanlal Porte, the Court below could not have given a finding of the wrongful possession taken by the Appellant over the said piece of land which he had come in possession by virtue of a sale deed. He again submits that the Court below in order to have convicted the Appellant for the offence under Section 3(1)(iv) of the Act ought to have first waited for the outcome of the appellate forum where the order of the Sub Divisional Officer in a proceeding under Section 170-B of the Code was under challenge and only thereafter should the Court below have proceeded further to determine whether the Complainant has been wrongfully dispossessed or not. Thus, prayed for quashing of the impugned order and for acquittal of the Appellant from the said offence.

5. Learned Counsel for the State however opposing the appeal submits that there is a clear finding of fact by the Court below inasmuch as there being an order under Section 170-B of the Code in favour of the Complainant and yet the Appellant did not hand over the possession to the Complainant and therefore the case has been clearly proved and established before the Court below, and thus prays for rejection of the appeal as there is no scope of interference.

6. Having considered the rival contentions put forth by either side and on perusal of the records, what is an admitted position is that though there is an order in favour of the Complainant on 30.10.1996 under the provisions of Section 170-B of the Code, but the said order being an appealable order and the Appellant having the right to appeal against the said order and had availed the right of appeal by filing of an appeal before the Court of the Commissioner, Bilaspur where the proceedings were pending and which fact was brought to the notice of the Court below vide Exhibit D-2. The fact that the appeal was pending before the Court of the Commissioner at the time of the proceedings initiated by the Trial Court it cannot be said that the order of the Sub Divisional Officer under Section 170-B of the Code had conclusively been established as there was a possibility of the appellate body reversing the finding of the Sub Divisional Officer. Thus, in the opinion of this Court, the Court below should have waited for the outcome of the appeal preferred by the Appellant against the order passed under Section 170-B of the Code before giving a finding of the Appellant to be wrongfully occupying the land belonging to the Complainant. Admittedly, from the pleadings it is evidently clear that the land originally belonged to one Ramlal and from Ramlal it got transferred to Mohardas and from Mohardas it came into the hands of the Appellant by

way of a sale deed. It is said that the said sale deed was set aside by the Sub Divisional Officer in a proceeding under Section 170-B of the Code, which was under challenge before the appellate Court.

7. From the records what is also an admitted fact is that the order passed by the Sub Divisional Officer under Section 170-B of the Code being subject matter of appeal before the Court of the Commissioner and which was pending during the trial also and which was duly brought to the notice of the Trial Court clearly establishes the fact that the wrongful occupation part had yet to be established as long as the appeal was pending and therefore the prosecution has failed to establish the fact that there was a conclusive proof of wrongful occupation over the disputed land by the Appellant.

8. Thus, for the foregoing reasons, this Court is of the opinion that the conviction of the Appellant was not proper. Accordingly, the appeal is allowed. Impugned order dated 31.5.1999 is set aside and the Appellant is acquitted of the charge under Section 3(1)(iv) of the Act.

Sd/-
(P. Sam Koshy)
Judge