

Murari Lal Chhari vs Munishwar Singh Tomar on 4 March, 2024

Author: Abhay S. Oka

Bench: Abhay S. Oka

2024 INSC 168

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPEAL NO.1076 OF 2024

Murari Lal Chhari & Ors.

... Appellants

versus

Munishwar Singh Tomar & Anr.

... Respondents

J U D G M E N T

ABHAY S. OKA, J.

FACTS

1. The first respondent filed a complaint under Section 200 of the Code of Criminal Procedure, 1973 (for short, the 'CrPC') against the appellants. The dispute relates to land bearing Survey Nos.1822 and 1823 having an area of 2 bighas and 1 biswa in Gwalior city (the Suit property). According to the first respondent – complainant, about 353 acres of land comprising several survey nos. situated in the adjacent villages has been allotted for the use of the Special Armed Forces (SAF) by the Home Department. The present appellants are officers of SAF.

2. The first respondent filed a civil suit in respect of the said property for a declaration of his title as Bhumiswami and a permanent injunction. The Trial Court dismissed the suit. The first Appellate Court dismissed the appeal against the decree of the Trial Court. However, in the Second Appeal, the High Court interfered and passed a decree of declaration and permanent injunction. A Special Leave Petition filed against the decree of the High Court was dismissed with costs. In 2016, the first respondent filed a Contempt Petition against the first appellant, who was the Commandant of the 14th Battalion of SAF at Gwalior. The allegation was of a breach of the decree passed on 20th March 2013 by the High Court in the Second Appeal preferred by the first respondent. The allegation was that the first appellant attempted to violate the decree of the High Court in the Second Appeal and

trespass upon the suit property. The High Court dismissed the Contempt Petition by Order dated 11th October 2017. The High Court held that the demarcation of the suit property bearing Survey nos. 1822 and 1823 was carried out ex parte by the first respondent in the absence of a representative of SAF. It was observed that a boundary dispute has cropped up between the SAF and the first respondent. During the pendency of the Contempt Petition, in 2017, the complaint subject matter of this petition under Section 200 of CrPC was filed by the first respondent alleging the commission of offences under Sections 323, 294, 427, 341, 447, 506B read with Section 34 and Sections 107, 141 of the Indian Penal Code (IPC). The allegation in the complaint was that though the first respondent was declared as the owner of the suit property by the High Court and though the demarcation of the suit property was carried out after notice to the SAF, the first appellant conspired with the other appellants to illegally capture the suit property. The specific allegation in the complaint is that on 8th January 2017, the appellant nos. 2 to 6 were present on the suit property, and they broke the fencing, which caused a loss of Rs.50,000 to the first respondent. It is alleged that when the first respondent objected, the appellants verbally abused the first respondent, and he was pushed several times. Even a death threat was administered by the appellants to the first respondent. The appellants also threatened the first respondent to send him to jail.

3. The learned Judicial Magistrate, Gwalior, before whom the complaint was filed, recorded the statement of the first respondent under Section 200 of CrPC. It appears that the learned Magistrate took recourse to the inquiry under Section 202 of CrPC and recorded statements on oath of two witnesses of the first respondent, Hari Singh Yadav and Lakhan Singh Tomar.

4. By Order dated 23rd June 2018, the learned Magistrate dismissed the complaint in exercise of powers under Section 203 of the CrPC. The learned Magistrate held that the mandatory requirement of obtaining a sanction to prosecute the appellants in accordance with Section 197 of CrPC was not obtained. In a revision preferred by the first respondent against the order of dismissal of the complaint, the learned Additional Sessions Judge interfered. The learned Additional Sessions Judge held that there was no inquiry made by the learned Magistrate on the issue of whether the appellants committed the acts constituting alleged offences in the discharge of official duties, the non-performance of which would have made the accused persons answerable for the dereliction of the official duties. Therefore, an order of remand was passed to enable the learned Magistrate to record a finding on the necessity of obtaining sanction for all the offences alleged. After the order of remand, by Order dated 11th October 2018, the learned Magistrate passed an order directing the cognizance to be taken under Sections 294, 323, 427, 447, and 506 of IPC. The learned Magistrate did not record any finding on the issue of sanction. This Order of the learned Magistrate was subjected to a challenge before the High Court by invoking provisions of Section 482 of CrPC. By the impugned Judgment, the High Court dismissed the petition.

SUBMISSIONS

5. The learned senior counsel appearing for the appellants urged that even taking the averments made in the complaint as correct, the acts attributed to the appellants were done by them in the performance of the statutory duties as officers of the SAF, and the learned Magistrate has completely overlooked this aspect. In fact, he has not decided on the issue of the requirement of

sanction at all. He submitted that even otherwise, in view of the earlier dismissal of the Contempt Petition, the order of summoning ought not to have been issued by the learned Magistrate.

6. The learned counsel appearing for the first respondent submitted that with due application of mind, the learned Magistrate issued process. The learned Magistrate had recorded the statements of three witnesses, including the first respondent. That was done based on materials on record. He submitted that committing acts of trespass cannot be a part of the appellants' official duty. Therefore, sanction to prosecute under Section 197 of CrPC was not required. He submitted that a full-fledged trial is necessary. All issues can be decided at the time of the final hearing of the complaint. He would submit that no interference is called for. We have also heard the learned Deputy Advocate General for the State of Madhya Pradesh.

CONSIDERATION OF SUBMISSIONS

7. There is no dispute that, at the relevant time, the appellants were the officers of SAF. We have perused the Contempt Petition filed by the first respondent alleging breach of the decree of injunction passed in the Second Appeal dated 20th March 2013. Only the first appellant was made a party as the contemnor to the Contempt Petition. The Contempt Petition was filed in the year 2016. In the Contempt Petition, a reference is made to the survey of the suit property carried out with the knowledge of SAF. The specific allegations in the Contempt Petition are as follows:

“3. That, the land of Survey No. 211 and 212 situated at Gudi Lashkar is adjacent to the land of the petitioner and disobeying the judgement of this Hon'ble Court the demarcation as put i.e. Muddiya stone sign has been made on the spot. In that regard an application was made to the Commandant, but the Commandant having not given any heed to the application contrarily day to day creating nuisance and disobey the judgement passed by this Hon'ble Court.

4. That, when the land of 14th Battalion is different not within the area of the petitioner's land despite of that putting aside the judgement of this Hon'ble Court are trying to trespass over the land of the petitioner. Therefore, it is matter of contempt of Court. The respondents are deliberately disobeying the judgement Annexure A/1 by this Hon'ble Court, therefore the action of the respondents comes under the definition of the Contempt of Court Act and non-compliance of the judgement of the Hon'ble Court also amounts to flagrant violation of the judgement of this Hon'ble Court.....” (emphasis added) It is pertinent to note that the Contempt Petition was dismissed on 11th October 2017. The Contempt Petition was dismissed by holding that there was a boundary dispute between the appellant and SAF.

8. In the complaint filed by the first respondent, averments were made regarding the survey of the suit property. It is alleged that the survey was made after due notice to SAF, and the property was fenced. Further allegations in the complaint read thus:

“.....

11. After the above said proceedings done, the Respondent/Accused No.1, advised and conspired with other Respondents to illegitimately capture the complainant's land and sent them for encroachment. On the date, 08.01.2017, Respondent nos. 2 to 6 being present there on the complainant's land, broke the fencing which caused a loss of Rs. 50000/- to the complainant.

12. When the complainant started defending his land and asked not to break the fencing, he was abused verbally and was pushed several times. Death threat was also given to him and was told that he could be sent to jail.

XXX XXX XXX

15. Even after the officers from S.A.F. came and caused damage to the land belonging to the complainant on 08.01.2017, he again fenced the land. Respondent no.1 sent Respondent no. 2 to 6 and again damaged the fence. They abused him verbally and gave the complainant a death threat again.

The complainant is scared that he might face anything in the future.”

9. In substance, the cause of action for filing the Contempt Petition and the alleged cause of action for filing the complaint was substantially the same. It is surprising that though the Contempt Petition was already filed in 2016, the said fact has not been mentioned in the complaint filed by the first respondent in the year 2017. The fact that the Contempt Petition was filed has not even been disclosed in the statement of the first petitioner recorded in the complaint. The first respondent did not challenge the dismissal of the Contempt Petition. In view of the finding recorded in the Contempt Petition by the High Court, taking the cognizance of the said complaint was surely an abuse of the process of law. The cognizance was taken after the dismissal of the Contempt Petition by a detailed order.

10. There is another factual aspect of the matter. In the examination of the first respondent on oath in the complaint, he has not given even the date on which alleged acts of encroachment and administering threats were made at the instance of the appellants. In the complaint, the allegation is that on 8th January 2017, the appellant nos.2 to 6 broke the fencing and gave abuses/threats. Surprisingly, this issue was not raised in the Contempt Petition, which was pending till 11th October 2017. Witness nos. 2 and 3 of the deposition do not name the appellant no.1 at all. The two witnesses have not given even the approximate dates of the alleged incidents.

11. Therefore, in our view, the further prosecution of the complaint was itself an abuse of the process of law, and therefore, the High Court ought to have quashed the complaint.

12. Accordingly, the impugned order of the High Court and the impugned order of the learned Magistrate taking cognizance are quashed and set aside, and the complaint filed by the first respondent stands dismissed.

13. The Appeal is, accordingly, allowed.

.....J. (Abhay S. Oka)J. (Ujjal Bhuyan) New Delhi;

March 4, 2024.