

Deb Ram vs State Through The Range Officer, ... on 19 September, 1951

Equivalent citations: AIR1952ALL33, AIR 1952 ALLAHABAD 33

ORDER

Agarwala, J.

1. This is a reference made by the District Magistrate of Dehra Dun.
2. The applicant Deb Ram was prosecuted by the Forest Department under Section 26(1)(a) and (h), Forest Act, on the ground that he was found cultivating land situate in Majog Compartment No. 7 which, by a notification dated 9-12-1924, had been declared a Government reserved forest. The defence was that the land had been in possession of the applicant and his forefathers for a very long time and had been continuously cultivated by them and that, therefore, no offence was committed by the applicant in continuing to cultivate the land. The accused was tried summarily by the Sub-Divisional Magistrate, Chakrata. The learned Magistrate did not reject the defence case that the land had been for a long time under his cultivation. But it was observed that even if the accused's contention, viz., that the land had been with his family for several decades be accepted, the rights of the tenants were extinguished by the issue of the notification aforesaid and thereafter the possession of the accused became illegal. The applicant was, therefore, convicted under Section 26(1)(a) and (b), Forest Act, and sentenced to pay a fine of Rs. 50 and in default of payment to undergo rigorous imprisonment for one month. The applicant went up in revision to the District Magistrate who made this reference, upon the ground that the provisions of Section 342, Criminal P. O. were not observed by the trial Court and further because the case was one which should more appropriately have been tried as a regular case. The learned Magistrate recommended that the order of the trial Court be set aside and the case be remanded for trial afresh.
3. The Magistrate examined the accused at some stage or the other. The examination is recorded in the following words : "Pleaded not guilty. Has filed written statement and would produce defence."
4. Section 342, Criminal P. C. is a general provision applicable to all prosecutions. There is a difference of opinion on the point whether this provision applies to summons cases and summary trials. The view of this Court, however, has been that it does apply to these trials. Vide *Emperor v. Sia Ram*, 57 ALL. 666. Section 342 requires the trial Court, after the prosecution evidence has been recorded, to examine "generally on the case." This expression "generally on the case" has been interpreted in some cases as referring to questions of a general nature relating to the case. In other cases, it has been held that the accused should be asked to explain, if he wishes to do so, the salient

points appearing in the evidence against the accused. After the Privy Council decision in *Dwarka Nath Verma v. Emperor*, A. I. R. (20) 1933 P. C. 124, it must be held that the later view is correct. This was not done in the present case. The effect of the omission to examine the accused, however, does not vitiate the trial altogether. The defect is curable by virtue of the provisions of Section 537, Criminal P. C. unless the accused had been prejudiced by the omission. In the present case, I am unable to say that the accused was prejudiced by the omission of the trial Court to examine him "generally on the case."

5. This, however, does not conclude the matter. The applicant must be taken to have been found to be in possession and cultivating the land for a long time. The question is whether in cultivating the land he has committed an offence under Section 26(1)(a) or (h) of the Indian Forest Act.

Under Section 4 of the Act, whenever it has been decided to constitute any land a reserved forest, the State Government shall issue a notification in the official Gazette, declaring that it has been so decided in respect of a specified piece of land. After the issue of the notification, no right shall be acquired in or over the land comprised in such notification, except by succession or under a grant or contract in writing made or entered into by or on behalf of the State, or some other person in whom such right was vested when the notification was issued and no fresh clearings for cultivation or for any other purpose shall be made in such land except in accordance with such rules as may be made by the State Government on this behalf (Section 5). In the present case, the applicant does not claim any right which he has acquired after the notification and since it has not been found that the land first began to be cultivated by the applicant or his predecessor after the notification, it cannot be said that the applicant has made "a fresh clearing."

6. After a notification under Section 4 has been issued, the Forest Settlement Officer is required to publish in the local vernacular in every town and village in the neighbourhood of the land comprised therein a proclamation specifying the situation and limits of the proposed forest, explaining the consequences which would ensue on the reservation of such forest and fixing a period of not less than three months from the date of such proclamation, and requiring every person claiming any right mentioned in Section 4 or Section 5 within such period either to present to the Forest Settlement Officer a written notice specifying or to appear before him and state, the nature of such right and the amount and particulars of the compensation (if any) claimed in respect thereof (Section 6). If no such claim is put forward within the time specified and of the existence of which no knowledge has been acquired by inquiry under Section 7 of the Act, all the rights shall be extinguished subject to a certain locus paenitentiae up to the date of the notification published under Section 20. Under Section 20, the State Government issues a notification declaring the land to be a reserved forest. This notification is to be issued after the period fixed under Section 6 for preferring claims has elapsed. Upon the issue of such notification the forest shall be deemed to be a reserved forest and by virtue of Section 23 no right is acquired in or over a reserved forest except by succession or under a grant or contract in writing made by or on behalf of the State or some person in whom such right was Tested when the notification under Section 20 was issued.

7. Notification under Section 20, in the present case, was issued in the year 1924. It is, therefore, clear that the applicant can be said to have no right to hold possession or cultivate the land in

dispute. Section 26 prescribes the acts which are prohibited in reserved forests: Any person who "(a) Makes any fresh clearing prohibited by Section 5,

(b)

(c)

(d)

(e)

(f)

(g)

(h) clears or breaks up any land for cultivation or any other purpose.

shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both, in addition to such compensation for damages done to the forest as the convicting Court may direct to be paid."

As the applicant was prosecuted under Clauses (a) and (h) only, we are not concerned with other clauses. The applicant cannot be said to have made a fresh clearing as prescribed by Section 5, as already stated. He cannot also be said to have cleared or broken up any land for cultivation or for any other purpose under Clause (h) because the land was already cleared and broken up, possibly before the notification under Section 20 was issued. In my judgment, the words, "clearing or breaking up of land" do imply the idea of clearing or breaking up land" which had not been cleared up or broken up already. They cannot mean cultivating the land which had already been cleared or broken. This view is supported by a decision of the Nagpur High Court in Nago Wani v. Emperor, A. I. R. (16) 1929 Nag. 190. It may be assumed that the applicant has no title to the occupation or cultivation of the land. He may, therefore, be a trespasser. But that is not the offence for which he has been charged. As he has not committed the offence for which he has been charged, his conviction cannot be allowed to stand.

8. This reference is, therefore, accepted. The conviction of the applicant is set aside and he is acquitted. The fine, if paid, shall be refunded to him.