

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR

ORDER

Yusuf Khan Vs. State of Rajasthan & Anr.

S.B.CRIMINAL REVISION NO. 963/2005
against the judgment & Order dated
17/10/2005 passed by Additional Sessions
Judge, Phalodi in Criminal Appeal No.
01/2005.

Date of Order : 28/4/2006

PRESENT

HON'BLE MR. JUSTICE H.R.PANWAR

Mr. G.M.Khan for the petitioner.
Mr. J.P.S.Choudhary, public prosecutor.
Mr. Farid Khan non-petitioner complainant present in person.

BY THE COURT:-

By the instant criminal revision petition under Section 397/401 Cr.P.C., the petitioner has challenged the judgment and order dated 17.10.2005 passed by Additional Sessions Judge, Phalodi (for short 'the appellate court' hereinafter) in Criminal Appeal No.01/2005, whereby the appellate court dismissed the appeal filed by the petitioner against the judgment and order dated 03.2.2005 passed by Additional Chief Judicial Magistrate, Phalodi (for short 'the trial court' hereinafter) in Criminal Case

No. 824/2002 and affirmed the conviction of the petitioner for the offence under Section 447 IPC as also the order releasing the petitioner under Section 4 (1) of the Probation of Offenders Act, 1958 (for short 'the Act' hereinafter). Aggrieved by the judgment and order impugned, the petitioner has filed the instant revision petition.

I have heard learned counsel for the petitioner and public prosecutor for the State as also the complainant appearing in person. I have carefully gone through the judgment and order impugned and record of the trial court.

On an FIR Ex.P-18 lodged by non-petitioner Farid Khan, police registered a Crime Report No. 92/2002 and ensued the investigation. After usual investigation, the police filed challan against the petitioner for the offences under Sections 447 and 420/120B IPC against the petitioner and co-accused Alladeen. The prosecution adduced evidence by producing as many as 10 witnesses and produced documentary evidence Ex.P-1 to P-19. The petitioner made statement under Section 313 Cr.P.C. and denied the allegation.

The trial court on appreciation of the evidence, by the judgment and order dated 03.02.2005 convicted the

petitioner for the offence under Section 447 IPC. However, by extending the benefit of doubt, acquitted the petitioner and co-accused Alladeen of the offence under Section 420/120B.

The case set up by the prosecution is that complainant-non-petitioner Farid Khan along with his three brothers jointly purchased an agriculture land bearing Khasra No. 226/1 which was subsequently partitioned by mutual consent between the co-sharers in the Samwat Year 2030 and since Samwat Year 2030, the non-petitioner and his other brothers were in exclusive possession of the land which fall in their share by partition by mutual consent. It is alleged that non-petitioner Farid Khan has been serving in Army and he is now an ex-service man. The allegation against the petitioner is that in the absence of the non-petitioner, he committed trespass on the land exclusively possessed by the non-petitioner by virtue of partition of the land between the brothers. This fact has been established from the statements of the prosecution witnesses as also the documentary evidence including revenue record.

The matter was taken up to the Board of Revenue. Up to the Board of Revenue, it was concluded that in the Samwat 2030, there had been a partition by mutual consent between the brothers and each of the brother had 1/4th share in

the holding. Thus, the Board of Revenue, Ajmer vide judgment dated 13.6.2003 held that Hameed Khan, Alladeen, Farid Khan and Yusuf all four brothers have 1/4th share in the holding and by mutual consent, a partition had taken place between them in the Samwat Year 2030.

Counsel appearing for the petitioner submits that the land is a joint holding and therefore, the offence of criminal trespass cannot be said to have been proved.

The statements of witnesses produced by the prosecution as also the revenue record and the judgment of competent Court i.e. Board of Revenue, clearly go to show that in Samwat Year 2030 by mutual consent the land was partitioned between the brothers i.e. the petitioner, non-petitioner and two brothers namely Hamid and Alladeen. The appellate court, on sound and proper re-appreciation of the evidence came to the conclusion that the prosecution has proved the case against the petitioner beyond reasonable doubt. There is concurrent finding of facts recorded by both the courts below. Learned counsel for the petitioner could not point out any evidence which has not been considered by both the courts below. Merely because at one point of time, the land was purchased jointly, would not make the status of the land as joint holding. Since there is

cogent and reliable evidence including the decision of competent court i.e. Board of Revenue that in the Samwat Year 2030 there had been a partition with the mutual consent of the parties and after the partition, every sharer is exclusively in possession of the land which fall in their share and therefore, the land which fall in the share of non-petitioner Farid Khan has been trespassed by the petitioner.

In my view, both the courts below were justified in convicting the petitioner for the offence under Section 447 IPC and releasing him on probation. In the circumstances thereof, I do not find any error, illegality or perversity in the judgment and order impugned warranting interference in revisional jurisdiction.

The revision petition is accordingly dismissed. Stay petition also stands dismissed.

(H.R.PANWAR),J.