

::IN THE COURT OF THE CHIEF JUDICIAL MAGISTRATE, NALBARI::

PRESENT : = Sri K. C. Boro, A.J.S.

Ref: GR Case No. 790/2016

State

-vs-

Taznur Ali

S/o- Lt. Tayeb Ali.

Village- Sapkata.

PS- Mukalmua.

Dist. Nalbari, Assam

..... Accused person.

u/s-188 IPC.

EVIDENCE RECORDED ON : 29.07.2017, 05.05.2018,
05.11.2018 & 05.12.2019.

ARGUMENT HEARD ON : 10.02.2020.

JUDGMENT DELIVERED ON : 20.02.2020.

ADVOCATES APPEARED :

For the State : Mr. D. Talukdar, Ld. A.P.P.

For the Accused : Smti. N. Patowary, Ld. Advocate.

J U D G M E N T

1. The case of the prosecution, in a brief, is that an FIR was filed on 01.06.2016, before the Officer-in-Charge of Mukalmua PS, by informant Md. Nafil Ali against the accused person namely Md. Taznur Ali, alleging inter alia that the above mentioned accused person violating the court order, on 15.04.2015, trespassed into the seized land in connection with Case No.16^M/2015 and constructed a house therein and on

15.04.2016, ploughed the said land and also did cultivation. When the informant resisted, accused verbally abused him. Hence, the case.

2. On receiving the case, the Officer-in-Charge of Mukalmua PS registered Mukalmua P.S. Case No.171/2016 u/s-188 IPC and started investigation. On completion of investigation the I.O laid charge-sheet against the accused person namely Md. Taznur Ali u/s-188 IPC vide CS No.118/2016 dated 30.06.2016.

3. In pursuance of the process issued, the accused person appeared before the court and on his appearance, the copies of the case as per the mandate of law u/s-207 Cr.P.C. were furnished to the accused person. Thereupon prima facie case was found against the accused person u/s-188 IPC and the substance of accusation u/s-188 IPC was explained to the accused person and he was asked whether he would plead guilty of the offences charged or claimed to be tried. He had pleaded not guilty and claimed to be tried.

4. During the trial, the prosecution side examined as many as 5 (five) witnesses. 313 Cr.P.C statement of accused person was of complete denial. The defence side declined to adduce any evidence.

5. I have heard the argument of both the sides. Ld. Defence counsel argued that there is no iota of proof that the accused has committed any offence. Per contra, Ld. APP submitted that the prosecution has been successful in proving the case beyond all reasonable doubt.

POINT FOR DETERMINATION

- Whether the accused person namely Md. Taznur Ali, on 15.05.2018 at the land covered by Dag No.39 and Patta No.94 of village No.4 Bhelamari under Mukalmua PS, knowing that by an order promulgated by a public servant lawfully empowered to promulgate such order, it was directed to abstain from unlawful assembly, disobeyed such direction by entering into the said land and thereafter, constructed house, ploughed therein and also did cultivation and

thereby committed an offence punishable U/S 188 of I.P.C?

DECISION AND REASONS THEREOF:-

6. PW.1 is Md. Atowar Rahman. He deposed that he knew both the sides. About two years ago, police came and gave the cultivation of *Som* to him on lease. There is a house at that land. He does not know who constructed the said house. He also does not know who did cultivation at that land. He does not know anything about this case.

7. Defence declined to cross-examine this witness.

8. PW.2 is Md. Sabed Ali. He deposed that he knew both the sides. There was a house of Taznur at the disputed land since earlier. Taznur used to do cultivation at that land.

9. During cross-examination, this witness deposed that the house was there since last 8 years. He has not visited the disputed land since last two years and as such, he could not state whether there was cultivation at the disputed land.

10. PW.3 is Md. Nafil Ali, informant. He deposed that the incident occurred due to land dispute. His father Md. Sorhab Ali donated 4 Bigha 3 Katha 17 Lecha land covered by Dag No.49 and Patta No.94 at village No.4 Bhelamari to his elder sister Sainur Bibi as his (PW.3) elder brother-in-law has been expired. His elder sister has no child. The land was encroached by river in 1997. Later on, the same has become useful for cultivation. Thereafter, he called upon Mandal and demarcated the boundary of his elder sister's land and thereafter constructed a chali house there. There was some utensils at the house. He alleged that one day, in the year 2015, accused vandalized his house and thereafter committed theft of the utensils and wearing apparels from the house. At that time, the land was seized u/s-144 CrPC. Thereafter, he filed the FIR. Ext.1 is the FIR land Ext.1(1) is his signature.

11. During cross-examination, this witness deposed that the civil case is still pending. He instituted the civil case. He filed the order of Hon'ble court with the FIR by which the land has been seized. He has

not seen the prohibitory order in the court.

12. PW.4 is Md. Habibur Rahman. He deposed that he knew both the sides. About 3-4 years ago, one day, he was directed from the O/o the DC, Nalbari to deposit the cash of *Som* cultivation in the treasury and accordingly, he conducted auction and deposited the cash in the treasury. He has forgotten who was the owner of the land.

13. Defence declined to cross-examine this witness.

14. PW.5 is Gol Hussain. He deposed that he knew both the sides. He was the President of the village in the year 2016. He admitted that accused was possessing the disputed land.

15. During cross-examination, this witness deposed that the disputed land belongs to Taznur.

16. These are the materials on record.

17. Before discussing the evidence available on record, I have found it justified to go through the section 188 of IPC which is as follows:-

“Section 188:- Disobedience to order duly promulgated by public servant — Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation — It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and

that his disobedience produces, or is likely to produce, harm.

Illustration - An order is promulgated by a public servant lawfully empowered to promulgate such order, directing that a religious procession shall not pass down a certain street. A knowingly disobeys the order, and thereby causes danger of riot. One has committed the offence defined in this section."

18. The word "promulgated" means making known an order openly and publicly. The forms of promulgation may be different, like reading an order in an open Court, or publishing the same in the gazette etc. Thus, where it could not be proved that an order, which the accused allegedly violated, was in fact passed by a magistrate, or where an order under section 144, Cr.P.C. was not served in the manner prescribed under the law, this section is held to be not applicable.

19. If an accused does not know that an order has been promulgated, or if a public servant is not lawfully empowered to promulgate an order, this section does not apply. There is no need to publish an order in a newspaper. The requirements of the section are not fulfilled if it is proved that merely a general notification was issued about the order.

20. The disobedience must either cause or it must have a tendency to cause obstruction, annoyance or injury as stated in the section. There has to be a factual proof of annoyance; mere mental annoyance of the concerned authorities is not intended to be included in this section.

21. It is pertinent to mention herein that taking cognizance of an offence under Section 188 of IPC has bar without a complaint as contemplated under Section 195(1)(a)(i) of Cr.P.C. In order to take cognizance for the offence under Section 188 of IPC, the complaint ought to have been filed in writing by the public servant who has promulgated the order or any officer who is administratively subordinate to him. In this case, the cognizance of the alleged offence

has been taken on the basis of the ejahar lodged by informant Md. Nafil Ali who is not an official personnel and not administratively subordinate to the public servant who has promulgated the order. In view of what is contemplated under Section 195 of Cr.P.C., this Court could not have taken the cognizance of the offence alleged.

22. In the totality of evidence on record and assessment thereof; this court landed in a decision that the prosecution has failed to prove the case beyond reasonable doubt against the accused person namely Md. Taznur Ali. Therefore, this court holds the accused person namely Md. Taznur Ali not guilty of the offences under section 188 IPC and he is acquitted of the offence u/s-188 IPC and set at liberty forthwith.

23. Bail bond will remain in force till expiry of the appellate period.

24. Judgment is written in separate sheets and delivered in open court.

Given under my hand and seal of this court on this the 20th day of February, 2020.

(Sri Kumud Ch. Boro)
Chief Judicial Magistrate
Nalbari

Dictated and corrected by me

(Sri Kumud Ch. Boro)
Chief Judicial Magistrate
Nalbari

Jitul

APPENDIX:

Witnesses for the prosecution

- PW.1 - Atowar Rahman.
- PW.2 - Sabed Ali.
- PW.3 - Nafil Ali, informant.
- PW.4 - Habibur Rahman.
- PW.5 - Gol Hussain.

Witnesses for the defence

None

Prosecution Exhibits

- Ext.1 - FIR

Defence Exhibits

None

(Sri Kumud Ch. Boro)
Chief Judicial Magistrate
Nalbari