



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

S.B. Criminal Misc(Pet.) No. 3421/2024

Sapna Nimawat W/o Sh. Hemendar Nimawat, Aged About 34
Years, R/o 179, Gali No. 2, Oad Basti, Amabamata, Dist Udaipur.

-----Petitioner

Versus

1. State Of Rajasthan, Through Pp
2. Ravij Sharma S/o Unknown, R/o SI, PS Ambamata,
Udaipur.

-----Respondents

For Petitioner(s) : Mr. Tushar Moad.
For Respondent(s) : Mr. H.S. Jodha, PP
Mr. Kailash Khatri – R/2.

HON'BLE MR. JUSTICE ARUN MONGA

Order (Oral)

10/09/2024

1. Quashing of FIR No. 217/2024, dated 14.05.2024, registered at Police Station Ambamata, District Udaipur, for alleged offences under Sections 448, 427, and 143 of the IPC, along with all consequential proceedings, is sought herein.
2. The brief facts of the case are that the Superintendent of Police, Udaipur, received a police complaint stating that some individuals were creating chaos at the Mahakaleshwar Mahadev Ji Siddh Dham temple. During the investigation of the complaint, the respondent No. 2 – complainant recorded witness statements and obtained a video CD. Upon reviewing the video, it was found that the petitioner, along with others, attempted to enter the temple forcibly by cutting the lock on the door. Consequently, respondent



No. 2 submitted a report to the SHO of P.S. Ambamata, Udaipur, for appropriate action, leading to the registration of the FIR in question.

3. In the aforesaid backdrop, I have heard the learned counsel for the petitioner, the learned counsel for the Temple Trust (not a party but represented in the hearing), and the learned Public Prosecutor.

4. The core of the matter is that the Trustees of the temple claim to have erected barricades to prevent worshipers from going beyond a certain point. However, the accused allegedly tried to cross the barricades forcibly, prompting the registration of the FIR. Interestingly, although the Trust appears to be the complainant, it did not file a police complaint. Instead, the FIR was lodged by Sub-Inspector Rajiv Sharma, who claims to have witnessed the incident.

5. First and foremost, FIR is since registered under Sections 143, 427 r/w 448 of IPC, for ready reference, relevant Sections 141, 143, 427, 442 & 448 of IPC are reproduced as under :-

“141. Unlawful assembly.-- An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

First.- To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second.- To resist the execution of any law, or of any legal process; or

Third.- To commit any mischief or criminal trespass, or other offence; or

Fourth.- By means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in



possession or enjoyment, or to enforce any right or supposed right; or

Fifth.- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.- An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.

143. Punishment.--Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

427. Mischief causing damage to the amount of fifty rupees.--Whoever commits mischief and thereby causes loss or damage to the amount of fifty rupees or upwards, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

442. House-trespass.--Whoever commits criminal trespass by entering into or remaining in any building, tent or vessel used as a human dwelling or any building used as a place for worship, or as a place for the custody of property, is said to commit "house-trespass".

Explanation.-The introduction of any part of the criminal trespasser's body is entering sufficient to constitute house-trespass.

448. Punishment for house-trespass.--Whoever commits house trespass shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."

6. A plain reading of the aforesaid sections reveals that the allegations in the FIR ex-facie do not establish any criminal intent (*mens rea*) on the part of the petitioner. Sections 448 (house-trespass), 427 (mischief causing damage), and 143 (unlawful assembly) of the IPC require an element of criminal intent or willful disobedience. In this case, concededly, the petitioner's primary objective was to access a place of worship, a public temple, which is a lawful act in itself. There is no evidence that the petitioner intended to cause harm, damage property, or disrupt





public order. Therefore, no prima facie case is made out for the invocation of these penal provisions.

7. A temple is a public place of worship, accessible to all citizens regardless of caste, creed, or social standing. Restricting access to such a place by erecting barricades or locks by private Trustees violates the fundamental right of every individual to practice and propagate their religion, as guaranteed under Article 25 of the Constitution of India. The Trustees, while managing the affairs of the temple, cannot act in a manner that deprives any or certain section of society, particularly the marginalized, of their right to worship. The FIR thus appears to be a clear abuse of the legal process, initiated with ulterior motives. The fact that the Trust did not itself file the complaint and that the FIR was registered by a Sub-Inspector who claimed to be an informer raises questions about the credibility and genuineness of the complaint.

8. The petitioner's Scheduled Caste/Scheduled Tribe background cannot be overlooked, especially in light of the fact that access to religious institutions has historically been restricted for marginalized communities. The denial of access to the petitioner, and the subsequent criminal complaint, could very well be an instance of caste-based discrimination. Such discriminatory conduct by the Trustees not only offends the principles of equality but also perpetuates social exclusion, contrary to the constitutional mandate of ensuring dignity for all citizens, particularly those from oppressed communities.



9. Moreover, the video evidence and photographs, which form the basis of the FIR, do not support the allegations of forceful entry or damage to property. At most, it appears that the petitioner attempted to cross a barricade to enter a public temple.

This act, without any accompanying evidence of violence, force, or mischief, cannot be categorized as criminal trespass or mischief under Sections 448 and 427. The absence of physical damage to the property or evidence of harm further weakens the case against the petitioner.

10. The invocation of Section 143 (unlawful assembly) is also unwarranted. To constitute an unlawful assembly, there must be evidence of a group of people with the common objective of committing an illegal act or using criminal force. As noted, the petitioner, as per the allegation, was simply trying to access a temple, which is not an unlawful act. In the absence of any violent intent or public disturbance, the charge of unlawful assembly does not stand.

11. To sum up, at the cost of reiteration, the Trust/trustees must realize that the temple is a public place. Merely because it is managed by certain Trustees does not make it their personal property. Every citizen has the right to access the temple and offer prayers. In this case, it seems the Trustees are creating an unnecessary barrier to the public's right of access. The fact that the petitioner belongs to a Scheduled Caste/Scheduled Tribe may have caused some discomfort among the Trustees, leading to the denial of access. Such conduct by the Trustees is unacceptable.



12. In the parting, I may hasten to add here that, in the course of hearing, the learned counsel for the Trust (though the Trust is not a party) presented some photographs to support the claim that the petitioner and others used force to break the barricades. Having seen the photographs, as noted already, it appears that one of the women (not identified by anyone present in court) was merely attempting to cross the barricades, and there is no indication of force being used to break them.

13. As an upshot, the petition is allowed. FIR No. 217/2024, dated 14.05.2024, registered at Police Station Ambamata, District Udaipur, for alleged offences under Sections 448, 427, and 143 of the IPC, along with all consequential proceedings, is quashed.

14. Pending application(s), if any, also stands disposed of.

(ARUN MONGA),J

23-Rmathur/-

Whether fit for reporting : Yes / No