IN THE COURT OF JUDICIAL MAGISTRATE CLASS I,
BONGAIGAON

PRESENT: SYEDA FARIDA AFZAL ZINNAT, AJS

G.R CASE NO: 870/2013

STATE OF ASSAM VERSUS ANANDA SUTRADHAR

U/S 447/294 IPC

FOR THE PROSECUTION: MR. R.C.MAHATO, LEARNED ASST. PP

FOR THE DEFENCE: MR. N.K. GHOSH, LEARNED ADVOCATE

EVIDENCE RECORDED ON: 24/9/2014

ARGUMENTS HEARD ON: 24/9/2014

JUDGMENT DELIVERED ON: 24/9/2014

JUDGMENT

1. On 19/11/2013 Smt Jeuti Pathak W/o Sri Amarendra Das of village Deuripara, P.S. Bongaigaon, District Bongaigaon, lodged a complaint petition in Court of C.J.M, Bongaigaon against Sri Ananda Sutradhar alleging that on the same day at about 11 am accused Ananda Sutradhar along with 4/5 other men tried to illegally trespass in her land and erect boundary fencing in order to illegally evict her from her land. Upon learning about this from special source she went to her land and resisted the accused and the accused abused her using obscene words and threatened her. Upon getting the complaint petition the same was forwarded to Bongaigaon Police Station for registering and investigating the case and accordingly Bongaigaon P.S Case No. 508/13 U/S 147/447/506 IPC was registered. After completion of investigation Police submitted Charge Sheet against the accused person Ananda Sutradhar u/s 447/294 IPC.

2. After receiving the charge sheet learned C.J.M, Bongaigaon took cognizance and transferred the case to my file for disposal.

3. Summons was issued and upon appearance the accused person was furnished with the copies of the relevant documents of the case in accordance with section 207 Cr.P.C. Upon perusal of the Case Record a prima facie case U/Ss 447/294 IPC was found to be well established against the accused person above named. Accordingly the particulars of the offences U/Ss 447/294 I.P.C were explained to the accused persons to which they pleaded not guilty and claimed to be tried.
4. During the course of trial as many as three witnesses were examined by the prosecution. The accused was examined under section 313 Cr.P.C. He pleaded not guilty and declined to adduce any evidence.
5. In order to determine whether the accused persons are liable as charged I framed the following point for determination:

1. Whether the accused person on 19/11/2013 at about 11 am at village Majgaon under Bongaigaon P.S., entered into or upon property in the possession of the informant with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property and thereby committed an offence punishable under section 447 IPC?
2. Whether the accused person on the same date, time and place, did any obscene act in any public place or uttered any obscene songs, ballad or words in or near any public place to the annoyance of others and thereby committed an offence punishable under section 294 IPC?

Discussion on Evidence, Decision and Reasons thereof:

6. PW2 Champavati Sutradhar stated on oath that she did not see anything and that she only heard that there was a quarrel near Civil Hospital.

7. PW3 Deepika Barman stated that at about last year she was in her shop near Civil Hospital. That, Jeuti Pathak and Ananda Sutradhar quarrelled near her shop. That, Arun Sutradhar had come to erect boundary fencing but could not.
8. During cross examination PW3 stated that she does not know who the owner and possessor of the land is, regarding which the quarrel took place.
9. PW1 Jeuti Pathak exhibited the complaint petition as Exhibit 1 and her signatures as Exhibit 1(1) and 1(2). She stated in her evidence that about three months ago at about 11 am she was at her home when a shopkeeper near her land informed her over phone that Ananda Sutradhar has brought some men to occupy her land. That, on getting the information she went to her land situated at Hatimutura. That, on arriving there she did not find Ananda Sutradhar there but she found four other men who told her that Ananda Sutradhar has gone to bring bamboo for erecting fencing. That, after about five minutes Ananda Sutradhar arrived there with bamboo and said that he has documents of the land. That, Ananda Sutradhar quarrelled with her and went away.
10. During cross examination PW1 stated that the land is mutated in the name of Charu Mohan Ray but she is in possession of the land. She admitted that there is no house or construction in the land and there is no boundary fencing too.
11. A careful appreciation of the evidence on record shows that there is nothing on record which suggests that the accused person abused the PW1 with obscene words. Hence it is found that the accused person is not guilty of the offence u/s 294 IPC.
12. PW2 does not know anything about the incident and PW3 stated that she saw the accused and the complainant quarrel near her shop. According to PW1 Ananda Sutradhar arrived in her land with bamboo and quarrelled with her. It is stated in the complaint petition that accused trespassed into her land with intention to evict her from her land.

13. Let us now take a look into the definition of Criminal trespass as provided in section 441 of the IPC. Section 447 IPC defines criminal trespass as follows: "Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence is said to commit criminal trespass."
14. From the evidence on record it is seen that prosecution could not show with just and cogent evidence that the property upon which the accused is alleged to have entered was in the possession of the informant. It is also seen that the accused did not commit any offence after entering into the disputed property. The element of mental state to commit an offence is found to be absent from the evidence on record. Therefore, although the accused may have entered in to the property to evict the informant therefrom the same cannot be said be an offence u/s 447 IPC. In fact, the dispute is purely civil in nature and the accused cannot be held to be guilty u/s 447 IPC.
15. From the above discussion I am of the opinion that there is not an iota of evidence against the accused person. Hence he is held not guilty and accordingly acquitted.

ORDER

The accused person namely Ananda Sutradhar is acquitted of the offences charged with. Bail Bonds are extended to a period of six months. Given under the hand and seal of this Court on this the 24th day of September 2014.

SYEDA FARIDA AFZAL ZINNAT
JMFC, BONGAIGAON

APPENDIX:

List of Exhibits:

1. Exhibit 1: Complaint petition
2. Exhibit 1(1), 1(2): signature of PW1

List of Witnesses:

1) PW1: Jeuti Pathak
2) PW2: Deepika Barman
3) PW3: Champavati Sutradhar