

(2016) 01 JH CK 0181
In the Jharkhand High Court
Case No : W.P. (Cr.) No. 273 of 2015

Basant @ Bashant Harlalka and other	APPELLANT
Vs	
The State of Jharkhand and other	RESPONDENT

Date of Decision : 14-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Forest Act, 1927 — Section 26, 41, 42, 52, 64

Citation : (2016) 2 ECRC 102 : (2016) 6 FLT 262 : (2017) 2 JLJR 626

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

Advocate : Kumar Harsh, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ravi Nath Verma, J. - Invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has questioned the legality of the order dated 10.10.2014 passed by learned Chief Judicial Magistrate, Chaibasa in C/3 Case No. 33 of 2014 whereby and where under the cognizance of the offence under Sections 26, 41, 42, 52 and 64 of the Indian Forest Act has been taken against the petitioner and one Genda Nag, driver of the apprehended tractor.

2. The facts of the case, which is based on the prosecution report cum offence report of Range Forest Officer, Gua Forest Range and relevant for the proper adjudication of the issue involved in this case, in short, is that on 28.03.2014 while forest officials were on patrolling duty at about 10.30 a.m., they entered into the Reserved Forest Compartment No. 13 near Hathi Chowk, Village Jojoguttu where two culverts were under construction and found a tractor loaded with boulders. Seeing the forest officials, labourers fled away but the driver of the tractor was apprehended and on enquiry the driver produced some documents and disclosed his name as Genda Nag and also disclosed the name of the owner of the said tractor as Bashant Harlalka (the petitioner). Where after,

after completing the formalities, the aforesaid prosecution report/offence report was submitted.

3. It appears from the record that the court below vide order dated 10.10.2014 took cognizance of offence as indicated above against this petitioner and the driver of the tractor and directed to issue summons for their appearance.

4. Mr. N.K. Pasari, learned counsel appearing for the petitioner assailing the order impugned taking cognizance, seriously contended that though the registration certificate of the tractor in question was produced before the concerned officer of the Forest Department showing Mukesh Harlaka being the registered owner of the vehicle but even then merely relying upon the statement of the apprehended driver of the said tractor Genda Nag that the owner of the vehicle is present petitioner, the court below took cognizance of the offence in a mechanical manner without applying judicial mind. It was also submitted that the said prosecution-cum-offence report ought to have been filed against the registered owner of the vehicle and the driver being the joint tort fearers and the filing of the offence report against the petitioner is impermissible. It was also submitted that from mere perusal of the order taking cognizance dated 10.10.2014, it would appear that the learned court below has not at all applied its judicial mind and in a mechanical manner filled up only the blanks left by office staff in the format like the words "cognizance" and "the relevant Sections" which clearly stipulates the non-application of judicial mind. Learned counsel further relying upon a judgment reported in the case A.P. Arya and Another v. State of Jharkhand and Another; 2011 (3) East Cr (C) 389 (Jhr) : 2011(3) JCR 471 (Jhr) submitted that the cognizance taken without application of mind only by filling up the blanks in the format is a mechanical exercise and unsustainable. Lastly, it was contended that no proceeding can be initiated as the area in question, from where the tractor has been seized, was not a reserved forest area as the said area has never been declared as reserved forest area under any notification after the notification of 27.02.1907 published in Calcutta Gazette.

5. Contrary to the aforesaid submission, the learned counsel representing the State relying upon different Paragraphs of the counter affidavit submitted that the Compartment No. 13 of Ghatkuri Reserve Forest from where the tractor in question was seized loaded with boulders, was notified as a reserve forest vide Notification No. 1170 L.R. dated 22nd February, 1907. The confiscation proceeding has also been initiated by Divisional Forest Officer, Saranda-cum-Authorized Officer for the confiscation of the seized tractor and the owner Bashant Harlalka has been rightly implicated as accused being the owner of the loaded tractor. It was also submitted that the court below after going through the prosecution-cum-offence report, has rightly taken the cognizance of offence. The offence report was prepared on the basis of the confessional statement of the apprehended driver.

6. From perusal of the prosecution-cum-offence report, it appears that the prosecution has been laying claim over the forest land as that of reserve forest

by virtue of Notification No. 1146 dated 27.02.1907 issued in Calcutta Gazette but in view of the provision as contained in Section 30 of the Forest Act, the said notification has lost its force after expiry of 30 years. For better appreciation, it is necessary to refer Section 30(b) of Indian Forest Act which reads as under:-

"30. Power to issue notification reserving trees, etc.- The State Government may, by notification in the Official Gazette,-

(a)

(b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the State Government thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such term provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the rights suspended in the portion so closed; or

(c)"

It is evidently clear from the perusal of the aforesaid provision that any declaration made by the Government for the land to be a protected forest shall be expired after 30 years from the date of issuance of notification. Similar question fell for consideration before the Patna High Court in a case of Janu Khan and Others v. State of Bihar; AIR 1960 Pat 213 wherein His Lordships observed as follows:

"Even if I take into consideration the notification referred to above, which is dated the 29th December, 1952, there had to be another notification under Section 30 of the Indian Forest Act, protected forest to be reserved from a date fixed in that notification."

This Court in a case of Jagdish Mehta v. State of Jharkhand and Others; 2003(2) JCR 525 (Jhr) has also followed the mandates given in the above judgment.

7. So far as other submissions of learned counsel for the petitioner is concerned, it is pertinent to mention that the owner book enclosed with this writ application as Annexure-4 clearly speaks that the owner of the said seized tractor is Mukesh Harlaka and not this petitioner and this petitioner is proprietor of M/s. Shankhu Baba Traders, Manoharpur West Singhbhum. One transport Challan has also been enclosed as Annexure-5 and on perusal of the said Challan also it appears that Mukesh Harlaka has been shown to be the owner of the seized tractor.

8. As regard to the submission of the learned counsel that the court below has not applied its judicial mind and in a mechanical way filled up some words like "cognizance" and "Sections" in stereotype proforma, it would appear from the order dated 10.10.2014 that the learned Chief Judicial Magistrate has recorded only the word "cognizance" and "few provisions of Forest Act" in the format.

9. Obviously, I find that the learned Chief Judicial Magistrate, Chaibasa did not carefully scrutinised the evidence brought on record before applying his judicial

mind and put the word cognizance at the blank space and also put the provisions of Forest Act in the blank space in a mechanical manner which cannot be sustained under law.

10. Under the situation, I am constrained to held that the protected forest area from where the tractor was seized was never forest land on account of fact that no further notification was ever issued and any declaration made by the Government in the year 1907 declaring areas as protected forest has already expired after 30 years of the date of issuance of the said notification. Secondly, the petitioner is not the registered owner of the vehicle in question and thirdly the learned Chief Judicial Magistrate took cognizance of the offence in a mechanical manner without applying his judicial mind.

11. Accordingly, the criminal proceeding of C/3 Case No. 33 of 2014 pending in the court of learned Chief Judicial Magistrate, Chaibasa and the order taking cognizance of offence dated 10.10.2014 against this petitioner are, hereby, quashed.

12. In the result, this writ application is allowed.