

(2006) 09 UK CK 0035

In the Uttarakhand High Court

Case No : Criminal M. Application No. 332 of 2006

Bharat Bhushan Martoliya and Others

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 12-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 197

Forest Act, 1927 — Section 26, 51, 73, 74

Wild Life (Protection) Act, 1972 — Section 27, 29, 31, 35, 59

Citation : (2007) 1 ACR 444

Hon'ble Judges : Prafulla C. Pant, J

Bench : Single Bench

Advocate : Manoj Tiwari, for the Appellant; Parikshit Saini and A.G.A., for the Respondent

Judgement

Prafulla C. Pant, J.—By means of this petition moved u/s 482 of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr. P.C.), the Petitioners have challenged the order dated 25.9.2004, passed by Chief Judicial Magistrate, Hardwar in Criminal Complaint Case No. 3095 of 2004 whereby the Petitioners have been summoned as accused on the complaint of Respondent No. 2 with regard to the offences punishable under Sections 392, 395, 504 and 506, I.P.C.

2. Heard learned Counsel for both the parties.

3. Facts, as narrated in the affidavit in support of above petition, are that the Petitioners are Officers/ employees of Forest department serving in Raja Ji National Park. All the Petitioners are public servants/ forest officers as defined in Section 73 of Indian Forest Act, 1927 and Section 59 of Wild Life (Protection) Act, 1972. In para 5 of the affidavit it has been stated that on 11.5.2004, Petitioners received an information that some persons had entered in Raja Ji National Park in a truck on which they rushed to the spot. The Petitioners found that two persons were cutting timber and two were loading the same in the truck within the forest area. According to the Petitioners a preliminary offence (H-2

case) was registered by Petitioner No. 5 which was numbered as 48/04-05. A seizure report was prepared and a complaint was filed against four persons who were arrested in connection with the offences punishable under Sections 26 and 51 of Indian Forest Act, 1927 and offences punishable under Sections 27, 29, 31 and 35 of Wild Life (Protection) Act, 1972. Said complaint was filed before the Chief Judicial Magistrate on 12.5.2004. Petitioners' case is that in said case accused were enlarged on bail. Respondent No. 2 Raj Kumar stood surety for one of the accused in said case. According to Petitioners, Petitioners were roped by Respondent No. 2 in a Criminal Complaint No. 3095 of 2004 making allegations against the Petitioners of offences punishable under Sections 392, 395, 504 and 506, I.P.C. for forcibly removing the timber to the office of forest department. The Petitioners have challenged the cognizance taken by the Chief Judicial Magistrate on said complaint on the ground that the Magistrate has erred in law in not considering the provisions of Section 74 of Indian Forest Act, 1927 and Section 27 of Wild Life (Protection) Act, 1972, apart from the provisions contained in Section 197, Cr. P.C.

4. Section 74 of Indian Forest Act, 1927, reads as under:

74. Indemnity for acts done in good faith.--No suit shall lie against any public servant for anything done by him in good faith under this Act.

(Uttaranchal Amendment--No suit, prosecution or other legal proceeding shall lie against the State Government or any public servant for anything done by him under this Act or Rules or orders made thereunder).

5. Section 60 of Wild Life (Protection) Act, 1972, reads as under:

60. Protection of action taken in good faith.--(1) No suit, prosecution or other legal proceeding shall lie against any officer or other employee of the Central Government or the State Government for anything which is in good faith done or intended to be done under this Act.

(2) No suit or other legal proceeding shall lie against the Central Government or the State Government or any of its officers or other employee for any damage caused or likely to be caused by anything which is in good faith done or intended to be done under this Act.

(3) No suit or other legal proceeding shall lie against the Authority referred to in Chapter IV A and its chairperson, members, member-secretary, officers and other employees for anything which is in good faith done or intended to be done under this Act.

6. Section 197, Cr. P.C., 1973, provides that when a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction.

7. Learned Counsel for the Respondent No. 2 argued that the Petitioners are not the public servants covered u/s 197, Cr. P.C. as no sanction is required for the removal from the Government, for they are appointed by Chief Conservator of Forest. Assuming for a moment that what the learned Counsel for Respondent No. 2 contends is true still the Magistrate appears to have erred in law by taking cognizance of the offences in this case in violation of Section 74 of Indian Forest Act, 1927 and Section 60 of Wild Life (Protection) Act, 1972.

8. Learned Counsel for the Respondent No. 2 submitted that the act done by the Petitioners is not an act done in good faith, as such, they are not entitled to the protection of aforesaid sections. After going through the contents of the complaint this Court is of the view that it is prima facie clear that the complaint has been filed as mere counter-blast as the Petitioners have booked associates of the complainant/Respondent No. 2 for offences allegedly committed by them under various Sections of Wild Life (Protection) Act.

9. For the reasons as discussed above, this Court is of the view that the proceedings in the Criminal Complaint No. 3095 of 2004 pending before the Chief Judicial Magistrate, Hardwar, are liable to be quashed.

10. Accordingly, the petition u/s 482, Cr. P.C. is allowed. The proceedings pending in Criminal Case No. 3095 of 2004 against the Petitioners are quashed.