

(1999) 11 KAR CK 0029
In the Karnataka High Court
Case No : Criminal Petition No. 1303 of 1999

B.L. Diwakar

APPELLANT

Vs

State of Karnataka And Another

RESPONDENT

Date of Decision : 15-11-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468, 482
Forest (Conservation) Act, 1980 — Section 2, 3 A
Karnataka Forest Act, 1963 — Section 24 (g), 24 (h), 73 (d)

Citation : (2001) CriLJ 305 : (1999) ILR (Kar) 4693 : (2000) 2 KarLJ 283 :
(2000) 2 KCCR 997

Hon'ble Judges : B.K. Sangalad, J

Bench : Single Bench

Advocate : Sri B.R. Patil and Sri V. Lakshminarayana, for the Appellant; Sri B.R. Nanjundaiah, State Public Prosecutor, for the Respondent

Judgement

1. The petitioner above named being aggrieved by the proceedings arising out of C.C. No. 613 of 1999 and the investigation made by the second respondent including FIR and the charge-sheet filed for the alleged offences under Sections 24(g), (h) and 73(d) of the Karnataka Forest Act, 1963 as amended read with Forest (Conservation) Act, 1980, (2 read with Section 3-A) of which the cognizance is taken, has preferred this petition to quash the proceedings and also the petitioner has made alternative prayer to pass any appropriate order as this Hon'ble Court deems fit.

2. It is stated that the land bearing Sy. No. 3 of Kenjigegudda Coffee Estate Village, Sy. Nos. 177 and 180 of Kundur Village formed a part of a Coffee Plantation owned by partnership firm called "KUNDUR COFFEE PLANTATION". The petitioner has stated that he is neither a partner nor the owner of the said coffee plantation. It is stated that the certificate issued by the Tahsildar in respect of Sy. No. 3 of Kenjigegudda Coffee Estate, Sy. Nos. 177 and 180 of Kundur Plantation, belongs to the brother of the petitioner Sri B.L. Shankar and Sri H.P. Kenchegowda, father-in-law of Sri B.L. Shankar. In the year 1974, a

partition took place between the petitioner and his brother Sri B.L. Shankar and others. Since then, the petitioner and his brothers are residing separately. Sy. No. 3 of Kenjigegudda Coffee Estate is not a reserved forest in view of the notification dated 25-4-1936 issued by the Government of His Highness the Maharaja of Mysore. Copy of the said notification is also enclosed herewith. It is further stated that Sri H.P. Kenchegowda, volunteered for an enquiry and the land was got measured by the Range Forest Officer and thereafter the Range Forest Officer submitted a report on 2-3-1989 stating that there was no encroachment at all. It is also submitted that from the year 1988 up to 1997, there was no allegation of encroachment. For the first time, the second respondent filed FIR on 30-11-1997 and that too this FIR came to be filed when the second respondent was transferred. At that time, the petitioner's brother Sri B.L. Shankar was the President of the State Janatha Dal and also member of the Parliament. After the FIR in FOC 55 of 1997-98 came to be filed, the land was measured by the Assistant Director of Land Records, Chickmagalur Sub-Division, Chickmagalur and submitted a report along with the sketch. The partnership firm submitted an application to the Department i.e., to the Assistant Director of Land Records to measure the land and fix the boundaries to ascertain the exact holding of the land and to find out whether there is an excess holding. After due survey and enquiry, a sketch was prepared in respect of Sy. No. 3 of Kenjigegudda Coffee Estate Village, Sy. Nos. 177 and 180 of Kundur Village. So far as Sy. No. 3 is concerned, there is clear finding that there is no encroachment.

3. In view of the allegations made by the second respondent in the FIR, the matter was transferred to the Joint Director of Land Records, Mysore to find out the veracity of the claim of the second respondent. The said Joint Director was of the opinion that it was not possible to come to the conclusion as to whether there was any encroachment by holder of Sy. No. 3 in Sy. No. 4 of Kenjigegudda Coffee Estate Village. In view of these facts, it is stated that the entire proceedings are liable to be quashed as there is no encroachment on Sy. No. 4.

4. Mr. B.R. Patil, learned Counsel for the petitioner strenuously submitted that when there is survey report that there is no encroachment on Sy. No. 4 the whole proceedings are liable to be quashed. When no offence is committed by the petitioner and two others, the proceedings ab initio are void. The Magistrate could not have taken the cognizance and further submitted that the alleged FIR has been filed on 30-11-1997 and the cognizance has been taken on 15-4-1999. In view of Section 468 of the Cr. P.C. the learned Magistrate ought not to have taken cognizance at all. He went one step ahead by submitting that there is no proper application of the mind by the learned JMFC to the facts and circumstances of the case especially in respect of the map which is part and parcel of the proceedings. All these submissions have been opposed by the learned State Public Prosecutor Mr. B.R. Nanjundaiah. He vehemently contended that under one or the other pretext the petitioner and two others have been protracting the proceedings and being influential persons in the political circle, they are somehow trying to overcome the situation. He further submitted that

there is nothing wrong for taking cognizance under Sections 24(g) and (h) and 73(d) of the Karnataka Forest Act, 1963, Section 8 read with Section 22 of the Karnataka Preservation of Trees Act, 1976 and Section 2 read with Section 3-A of the Forest (Conservation) Act, 1980.

4-A. The learned State Public Prosecutor took time to produce the report of the Joint Director of Land Records, Mysore Division, Mysore.

He produced it with a memo dated 8-10-1999. After production of these documents, again the further arguments were heard.

5. After going through the petition averments, and the objections, the points that go to the root of the question are

1. Whether the petitioner and two others have encroached upon the land bearing Sy. No. 4 of Kenjigegudda Coffee Estate Village?

2. Whether the cognizance taken and the further proceedings should be quashed if point No. 1 is held in favour of the petitioner?

6. The learned Counsel for the petitioner relied upon the decision in the case of Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others, , wherein it is held as follows:--(relevant portion so far as this case is concerned is extracted below).

"The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. No doubt the Magistrate can discharge the accused at any stage of the trial if he considers the charge to be groundless, but that does not mean that the accused cannot approach the High Court u/s 482 of the Code or Article 227 of the Constitution to have the proceeding quashed against him when the complaint does not make out any case against him and still he must undergo the agony of a criminal trial".

7. The learned Counsel for the petitioner also relied upon the decision in the case of Ashok Chaturvedi and Others Vs. Shitulh Chanchani and Another, . In para 5 it is held as follows:--

"5. The learned Counsel for the respondent in this connection had urged that the accused had a right to put this argument at the time of framing of charges, and therefore, this Court should not interfere with the order of Magistrate taking cognizance, at this stage. This argument however, does not appeal to us inasmuch as merely because an accused has a right to plead at the time of framing of charges that there is no sufficient material for such framing of charges as provided in Section 245 of the Criminal Procedure Code he is debarred from approaching the Court even at an earliest point of time when the Magistrate takes cognizance of the offence and summons the accused to appear to contend

that the very issuance of the order of taking cognizance is invalid on the ground that no offence can be said to have been made out on the allegations made in the complaint petition. It has been held in a number of cases that power u/s 482 has to be exercised sparingly and in the interest of justice. But allowing the criminal proceeding to continue even where the allegations in the complaint petition do not make out any offence would be tantamount to an abuse of the process of Court, and therefore, there cannot be any dispute that in such case power u/s 482 of the Code can be exercised".

8. The learned State Public Prosecutor however, strenuously contended that since there is encroachment to the extent of 32 acres and odd guntas, the matter should not be lightly treated.

9. The best document at this stage that could be relied upon is that of the report given by the Joint Director of Land Records, Mysore Division dated 21-6-1999 for the simple reason that it is now produced by the State itself. So the fate of the petitioner depends upon this report. This report runs seven pages.

9-A. The Joint Director of Land Records, Mysore Division, Mysore was specially directed to verify the map prepared jointly by the Officials of the Forest and Officials of the Assistant Director of Land Records, Chickmagalur in connection with the encroachment by holders of Sy. No. 3 (petitioner and two others) and of Sy. No. 4 of Kenjigegudda Coffee Estate Village. After the receipt of this letter, he has verified the joint sketch prepared by the staff of ADLR and the Forest Department. In addition to this, according to his report, he has stated that all other available original documents in Taluk Survey Office, Mudigere have been verified. In addition to this, he has visited the spot on 3-7-1998 along with the survey and the forest officials. He has decided to make fresh survey of the disputed lands i.e., Sy. Nos. 3 and 4 of Kenjigegudda Coffee Estate Village and also other survey numbers of both Kenjigegudda Coffee Estate Village and adjacent Kundur Village. On page 3 of the report, the observations are as follows:

"The disputed Sy. No. 3 (see map Uvwxyu) is located on the Southern boundary of the Sy. No. 181 (on point Nos. 8 and 9) uvwxyu is the boundary of Sy. No. 3 according to original record. The enjoyment (actual cultivation on ground) of the holders" of Sy. No. 3 on the western portion (top of the hill) i.e., x - w, exactly coincides with the original tippan boundary, whereas on the eastern portion, their enjoyment is well within the original tippan boundary (uvw). The green coloured portion which is about 9 acres and 20 guntas is left out without cultivation.

From this it can be inferred that the holders of Sy. No. 3 have not encroached any land in Sy. No. 4 of Kenjigegudda Coffee Estate Village".

10. It is also observed that several original points and structures depicted in the original map prepared have been verified on the ground which are found even today undisturbed. This report is succinctly drawn out. At this stage, the competent authority is the office of the Joint Director of Land Records. When this report itself says that there is absolutely no encroachment, it is

ununderstandable how one can imagine that there is any encroachment on Sy. No. 4. This report assumes lot of importance because it is produced by the State itself.

11. The petitioner has made allegations in the petition itself that the proceedings were initiated with the mala fide intention of harassing the brother of the petitioner by name B.L. Shankar and to mar his political career. Mr. B.R. Nanjundaiah, learned State Public Prosecutor submitted that this allegation is not true. This case is also treated as one of other cases. There are as many as six hundred cases filed against the different persons who have made encroachment in the forest land in Chickmagalur Forest Division. It is also submitted that already there are 156 cases pertaining to encroachment made in Thotkola Reserved Forest. Despite assertions and denials, what remains is that whether there is any encroachment on Sy. No. 4. Of course, when the political people are involved in the case sometimes, it is but natural to make exaggerations. The Court cannot be swayed by the status of an individual in the case. Ultimately it all depends upon the facts and circumstances and law bearing thereon. Even assuming that there are 156 cases pertaining to encroachment, they are not connected with this reserved forest. Judging from any angle, the facts are crystal clear and that the report of the Joint Director of Land Records, is helping the petitioner instead of supporting the case of the prosecution. Under such circumstances, the Court is left with no option otherwise than holding that there is no encroachment at all.

12. The learned Counsel for the petitioner submitted that the cognizance now taken is beyond the period of limitation. This submission has been opposed.

13. Section 468 of the Cr. P.C. reads as under:--

"Section 468. Bar to taking cognizance after lapse of the period of limitation.-

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purpose of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment".

14. Section 24(g) and (h) of the Act states that in the event of conviction, the punishment is that of imprisonment for a term which may extend to one year or with fine which may extend to Rs. 2,000/- or with both and in addition be liable to pay such compensation for the damage done to the forests as the convicting Court may direct to be paid. u/s 73(d) of the Karnataka Forest Act, 1963 the prescribed punishment is imprisonment which may extend to two years or with fine or with both. Likewise, for the offence u/s 8, the penalty to be imposed on conviction is the imprisonment which may extend to three months or with fine of Rs. 1,000/- or with both. u/s 3-A of the Act, the punishment is simple imprisonment for the period which may extend to 15 days.

15. In view of the punishment prescribed u/s 73(d) of the Act, I don't think that there is much force with regard to the application of the limitation. If Section 73(d) of the Act had been excluded, then the arguments could very well fit in.

16. The other point that was canvassed at one stage by the petitioner is that whether the forest officer has power to investigate without the express permission of the Magistrate as contemplated u/s 155(2) of the Cr. P.C. has not been pressed. As such, it is not necessary to answer on this point.

17. When the materials are placed including the charge-sheet before the JMFC before taking cognizance he must apply his mind properly. After the application of the mind, if he feels that there is material to proceed with, then he can proceed in accordance with law including the taking of the cognizance. Taking cognizance is very sensitive zone. It should not be mechanical. The order sheet dated 15-4-1999 reads as under:--

"D.C.F., Chickmagalur has submitted charge-sheet against the accused persons for an offence punishable under Sections 24(g) and (h) and 73(d) of KFA, 1963, Section 8 read with Section 22 of KPT Act, 1976 and 2 read with Section 3-A of F.C. Act, 1980.

FIR enclosed. Accused are not any bail.

Perused the charge-sheet, cognizance taken, register the same and issue SS to accused, call on 31-7-1999".

18. In my opinion, when severe allegations are made, it is the duty of the Magistrate to apply his mind before taking cognizance. In my opinion, the order sheet shows that the Magistrate has acted mechanically. Such kind of approach to the case may unnecessarily jeopardise the cause of justice. One should not be swayed away by the personalities involved in the case. The long hands of law wilt not allow any one to escape from the clutches. At the cost of repetition it has to be stated that in view of the fact that there is no encroachment on Sy. No. 4 taking cognizance becomes redundant and consequently the whole proceedings in C.C. No. 613 of 1999 are liable to be quashed. Hence the following order:--

In the result, the petition is allowed. The whole proceedings in C.C. No. 613 of 1999 are quashed and all the accused are discharged.