

(2016) 11 BOM CK 0029

In the Bombay High Court

Case No : Criminal Writ Petition No. 51 of 2009

Dattu

APPELLANT

Vs

Range Forest Officer

RESPONDENT

Date of Decision : 16-11-2016

Acts Referred:

Bombay Forest Rules, 1942 — Rule 35, Rule 41, Rule 66, Rule 78, Rule 88(1)
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 120B, Section 379, Section 395
Wild Life (Protection) Act, 2002 — Section 14,

Citation : (2017) 7 FLT 71

Hon'ble Judges : V. K. Jadhav, J.

Bench : Single Bench

Advocate : Mr. AM Gaikwad, Advocate, for the Petitioner; Mr. A.R. Kale, APP, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

V. K. Jadhav, J. (Oral)—By this writ petition, the petitioner-original accused, is seeking quashing and setting aside the complaint bearing R.C.C. No. 60 of 2008, later on, after committal, bearing Sessions Case No. 12 of 2008 pending before the learned Sessions Court, at Jalgaon.

2. Brief facts giving rise to the present criminal writ petition are as follows:-

(a) On 1.1.2008, Gram Panchayat of village Nanded, Tq. Dharangaon, District Jalgaon, published a notice in daily newspaper "Punyanagari" thereby calling tenders for cutting and removing thorny bushes and herbs on the land belonging to the village Panchayat. In the said notice, auction was kept on 7.1.2008. The present petitioner as well as other 4 to 5 contractors, have participated in the tender process and since the petitioner was the highest bidder, quoted an amount of Rs.3,21,000/-, his bid was accepted and said tender was allotted to the petitioner. Even the petitioner has deposited amount of Rs.1,72,000/- in Gram Panchayat, Nanded and also commenced the work of cutting the bushes

and herbs. However, respondent No.1, Range Forest Officer, on his own, has filed a complaint before the J.M.F.C. Amalner, District Jalgaon, which is numbered as R.C.C. No. 60 of 2008 against the petitioner accused and 100 unknown persons, alleging therein that the petitioner has committed a grave crime in violation of provisions of Forest (Conservation) Act, 1980 and without obtaining prior permission of Maharashtra Forest Department viz. the Deputy Conservator of Forests, Jalgaon Division, prior to cutting of standing trees, numbering more than 2012. It has also alleged in the complaint that the illicit falling of the trees standing on the Gairan lands resulted in wanton damage to the local ecology and all the area has undergone irreparable loss. The wild life habitat and natural surroundings have suffered greatly. It has also alleged that the petitioner has violated the provisions of Sections 41, 35 of Indian Forest Act, 1927, the provisions of Rule 66, 88(1) and 78 of the Bombay Forest Rules, 1942, the provisions of Wild Life (Protection) Act 1972 as well as the amended Sections 9, 39, 51 and 52 of the Wild Life (Protection) Amendment Act 2002.

(b) The learned J.M.F.C. Amalner, by order dated 1.4.2008 has issued process against the petitioner-accused for the offences punishable under Sections 379, 395, 120-B of I.P.C. and Sections 3, 14, 51, 52 of Wildlife (Protection) Amendment Act 2002 and Rules 41, 35, 66, 88 (1) and 78 of Bombay Forest Rules. It appears that, now the learned Magistrate has committed the case to the Court of Sessions, as some of the offence are exclusively triable by the court of Sessions and thus, the case is now pending before the Sessions Court, bearing Sessions Case No. 12 of 2008.

3. Learned counsel for the petitioner submits that the Chief Executive Officer, Zilla Parishad, Jalgaon had granted permission to Gram Panchayat, Nanded regarding falling of 3200 thorny trees/ bushes standing on the Gairan land, vide letter dated 12.12.2006. On 14.3.2008, respondent No.1, who happened to be Range Forest Officer, had been to the office of village Panchayat and inquired about the work of cutting of thorny bushes and herbs and he had illegally demanded Rs.50,000/- from Sarpanch of the village and threatened to register the offence, in case his demand is not fulfilled. The news item was published in the newspaper, indicting that vast felling of trees is going on in the village Nanded. Consequently, on 17.3.2008, the Assistant Deputy Conservator of Forest, Jalgaon, has conducted enquiry, as directed by the higher officer and carried out spot panchnama as well as recorded the statements of Sarpanch and other persons in the village. During the course of enquiry, it was revealed that respondent No.1, Range Forest Officer, has filed false complaint only for the reason that the Sarpanch of village Panchayat has not fulfilled his demand. Learned counsel submits that in view of the said enquiry, respondent No.1 came to be suspended by the forest department. Respondent No.1-original complainant, having fully aware that the departmental enquiry has been commenced against him and he is likely to be suspended, hurriedly approached the court and filed a private complaint against the present petitioner, which is numbered as R.C.C. No. 60 of 2008. Learned counsel for the petitioner submits

that even respondent No.2-State has admitted the said position in the affidavit in reply filed by the Assistant Conservator of Forest (E.G.S.), Jalgaon Forest Division, Jalgaon. Learned counsel submits that the continuation of said proceedings would be an abuse of court process.

4. None present for respondent No.1, though duly served.

5. Learned A.P.P. for respondent No.2 State submits that action taken by respondent No.1 was not legal and valid. This fact was also brought to the notice of learned J.M.F.C. through learned A.P.P. as per the letter issued by the Deputy Conservator of Forest, Jalgaon dated 10.4.2008. It was specifically brought to the notice of the Magistrate that respondent No.1 had lodged the complaint before the Court without prior permission from the office. Learned A.P.P. submits that the Chief Executive Officer, Zilla Parishad, Jalgaon granted permission to Gram Panchayat, Nanded regarding felling of 3200 thorny trees/bushes standing in Gairan land of Gram Panchayat, Nanded, vide letter dated 12.12.2006 and that respondent No.1, on his own, without obtaining prior permission from the office of Deputy Conservator of Forest, Jalgaon division, Jalgaon has filed the complaint before the Magistrate. The learned A.P.P. submits that departmental enquiry was initiated on account of said misbehavior on the part of respondent No.1 and he was kept under suspension as per the order passed by the Chief Conservator of Forest. Even respondent No.1 had challenged the said suspension order and action of initiation of departmental enquiry, by filing Original Application No. 139 of 2008, before the Maharashtra Administrative Tribunal, Bench at Aurangabad. However, the said original application also came to be dismissed in default.

6. Pravin Shivilal Patil, the Assistant Conservator of Forest (E.G.S.) Jalgaon, Jalgaon Forest Division, has filed affidavit on behalf of Forest department and para 13 of the said affidavit in reply reads as under:-

"13. With reference to para No. 8 of the Writ Petition I say that, the action taken by the then R.F.O. Mobile Squad was not approved by his superior or controlling officers. Hence the action taken by the Respondent no. 1 is not legal and valid and this fact was brought to the notice of the learned J.M.F.C. Amalner through the Government Pleader, Amalner as per letter from Dy. Conservator of Forest, Jalgaon dated 10.4.2008. Hereto annexed and marked as EXHIBIT-R-8 is the copy of the said letter dated 10.4.2008. I say that, it was intimated that Shri. E.S. Peerzada lodged the complaint before the learned J.M.F.C. Amalner without prior permission from this office. The Chief Executive Officer, Z.P. Jalgaon granted permission to the Gram Panchayat, Nanded regarding felling of 3200 thorny trees/bushes in respect of Nanded Gairan vide his letter dated 12.12.2006. It was intimated that Shri. E.S. Peerzada lodged the complaint before the learned J.M.F.C. Amalner at his own level without prior permission from office of the Deputy Conservator of Forest, Jalgaon Division, Jalgaon who has submitted the parawise reply (Point 1 to 15) to the Asst. Government Pleader, Amalner vide letter dated 15.1.2009. Hereto annexed and marked as EXHIBIT-R-9."

7. Further, it is a part of record that respondent No. 1 Range Forest Officer was subjected to departmental enquiry on account of his misbehavior in terms of action taken, as detailed in the forgoing paras, and even he was suspended by the Chief Conservator of Forest, by order dated 28.03.2008. It is also a part of record that the Assistant Conservator of Forest (Soil Conservation) of Jalgaon division, has visited the spot and also recorded statements of concerned persons, including Sarpanch of Gram Panchayat, Nanded, on 17.03.2008 and it was revealed that no offence was committed in respect of Wildlife (Protection) Act, 1972 or any other offence relating to forest. The Village Panchayat, Nanded by publishing public notice, in daily news-paper, invited tenders for removing the thorny bushes and herbs in the Gairan land belonging to village Panchayat, Nanded. The said notice was published in the newspaper after obtaining permission from the Chief Executive Officer, Zilla Parishad, Jalgaon. It appears that since the departmental enquiry was initiated against respondent No. 1 and he was suspended by the Chief Conservator of Forest in the course of said departmental enquiry, respondent No. 1, Range Forest Officer, at his own, without obtaining any permission from the forest department, lodged a complaint against the petitioner. The petitioner was the highest bidder and since he has quoted highest bid, his tender for cutting thorny bushes came to be accepted. Further the petitioner has also deposited certain amount to the village Panchayat and also commenced the work of cutting the said bushes. Thus, I do not find that the petitioner has committed any offence as alleged in the complaint. The continuation of said proceedings, now pending before the Sessions Court, would be an abuse of court process. Hence, I proceed to pass the following order:-

ORDER

- I. Criminal writ petition is allowed in terms of prayer clause "B-1".
- II. Rule made absolute in the above terms.
- III. Criminal writ petition is disposed of.