
(1953) 01 PAT CK 0004
In the Patna High Court
Case No : Criminal Ref. No. 82 of 1952

Jai Gopal Singh and Others

APPELLANT

Vs

Divisional Forest Officer

RESPONDENT

Date of Decision : 05-01-1953

Acts Referred:

Bihar Private Forest Act, 1947 — Section 3(10), 30, 49
Evidence Act, 1872 — Section 22, 61, 65, 74

Citation : AIR 1953 Patna 310 : (1953) 1 BLJR 199

Hon'ble Judges : Ahmad, J

Bench : Single Bench

Advocate : Dasu Sinha, for the Appellant; Ramanand Sinha and A.G., for the Respondent

Judgement

Ahmad, J.—This is a reference u/s 438, Criminal P. C. by Mr. S. B. Sengupta, Sessions Judge of Hazaribagh.

2. In the letter of reference the learned Sessions Judge has recommended that the order dated 5-5-1952 passed by Mr. Rule A. Singh, Sub-Deputy Magistrate, 1st Class, Giridih, convicting three persons, namely, Jai Gopal Singh, his father Teko Chand Singh and Bipal Mahto u/s 49, Bihar Private Protected Forests Act of 1947, and sentencing each one of them to pay a fine of Rs. 40/-in default one month's rigorous imprisonment be set aside.

3. In the district of Hazaribagh there is a jungle known as Ghosko jungle. Sometime back, according to the prosecution, this Ghosko jungle was under the provisions of Section 13, Bihar Private Protected Forests Act of 1947 constituted a private protected forest in the manner provided in the Act and in due course the State Government published the necessary notification as well in the official Gazette as required by Section 30 of the Act specifying definitely, according to boundary marks erected or otherwise, the limits of the forest, and declaring the same to be a private protected forest.

4. The case of the prosecution was that on 23-1-1951 forest Guards Ramanand Singh and Sakti Singh while they were patrolling in that jungle found the aforesaid three persons cutting the sal woods from that forest. The two forest guards raised a protest on which those persons stated that they were cutting wood from their raiyati land and it was open to them to take any action they liked. The matter was ultimately reported to Mr. M. K. Singh, the officer in charge of that forest. He on getting the report obtained a warrant and searched, the houses of those persons and recovered 439 poles from the house of Teko Chand Singh under 15" girth. Those poles, according to him, tallied with the stumps and they appeared to be freshly cut. The three accused pleaded not guilty to the charge. Their defence was that it was their raiyati land and also that the demarcation had been made after the institution of the case.

5. In support of the charge the prosecution examined a number of witnesses. P. W. 1 is the Forester Mr. M. K. Sinha. He deposed: "This Ghosko forest is a Bihar Private Protected Forest. Notices under Sections 14, 21 and 29 have been served by forest guard Raghunath Singh. It has been published in the Gazette. It has been demarcated and demarcation pillars have been fixed." In cross-examination he further stated: "I cannot say the plot of reservation. Boundary pillars were fixed from before. I have seen some of pillars in all sides. It is a pillar of earth and somewhere it is of stone. I cannot say the exact date. I cannot say the number of pillars. I have seen the actual cutting. I did not ascertain the plot number of the cutting..... It is not a fact that demarcation pillars have been fixed afterwards. I had no. map with me." P. W. 2 Binda Singh was a search witness. Ramanand Singh, P. W. 3 is the forest guard. He deposed: "It is a B. P. P. Act jungle and notices under Sections 14, 21 and 29 have, been served upon the parties", while Sakti Singh, P. W. 4 another forest guard, stated, "It is a Bihar Private Protected Forest and notices under Sections 14, 21 and 29 have been served by forest guard Raghunath Singh." It was on these oral testimony given by the three witnesses, namely, Mr. M. K. Singh, Ramanand Singh and Sakti Singh, that the prosecution wanted to establish that the forest was in fact a Bihar Private Protected forest and as such the provisions of the Bihar Private Protected Forests Act of 1947 were applicable to the facts of the case. The learned Magistrate accepted this contention and held: "it is quite clear that Gazette notification showed that the Ghosko jungle was taken by the Govt. under Bihar Protected Forest" and convicted and sentenced the accused as stated above.

6. Against this order of conviction and sentence passed against the petitioners on the finding stated above, an application in revision was filed before the learned Sessions Judge on their behalf.

7. The learned Sessions Judge on hearing the parties came to the conclusion that the view taken by the trial Court was not correct. He has in the letter of reference stated: "But neither Raghunath Singh has been examined nor has the service report of Raghunath Singh for service of notice under Sections 14, 21 and

29, Bihar Private Protected Forests Act has been produced. The alleged Gazette notification has also not been produced. In the absence of such evidence the learned trying Magistrate committed an error of law in holding that the disputed area has been declared to be a private protected forest". In support of this view he laid reliance on the principle laid down in the case of -- Parhan Mahto Vs. Divisional Forest Officer, .

8. The private protected forest has been defined in el. (10) of Section 3 of the Act. That clause reads:

" "private protected forest" means a forest specified in a notification issued u/s 30 or the proviso thereto."

9. Section 30, Bihar Private Protected Forests Act of 1947 provides that, when certain events have occurred which need not be mentioned here "the Provincial Government shall publish a notification in the official Gazette specifying definitely according to boundary marks erected or otherwise, the limits of the forest which is to be constituted a private protected forest, and declaring the same to be a private protected forest from a date fixed by the notification and from the date so fixed such forest shall be deemed to be a private protected forest." There is a proviso attached to this section. That is, however, not relevant for the purpose of the present case. The final act, therefore, which converts a private forest into a private protected forest under the Act is the publication of this notification in the official Gazette to the effect, in terms of Section 30. In the absence of any publication of the notification in the official Gazette in terms of Section 30 relating to any particular private forest, that forest cannot in law be constituted a private protected forest.

10. The important question raised in this reference by the learned Advocate-General appearing for the State was as to how the fact of a particular forest being a private protected forest can be proved in law. No doubt, at the outset he conceded that the best proof in support of the fact is the Gazette itself wherein the notification to that effect in terms of Section 30 is published. He, however, argued that though the Gazette was the best proof, that was not the only proof, and according to his contention that fact can as well be proved by some other mode, say by oral evidence.

11. I may point out here that a notification contemplated by the provisions of Section 30 has in broad terms to contain two facts, firstly, that the forest from a particular date would be constituted into private protected forest, and, secondly, that it shall have its area as defined therein. It is, therefore, necessary that in order that the provisions of the Act may be applicable in a particular case it should be proved, firstly, that the forest is a private protected forest and, secondly, that the act complained of was done in relation to and within the boundary of that forest. These two factors can be very conveniently, as admitted by the Advocate-General, proved by the production of the Gazette. I, however, feel that the Gazette is not only the best proof of the fact but perhaps in the

circumstances of the case the Gazette itself or its certified copy is the only proof of it. The notification u/s 30 has a presumptive value u/s 114, Evidence Act to the effect that all the official acts necessary in law to constitute a forest as a private protected forest have been regularly performed, and the official Gazette has the presumptive value u/s 81, Evidence Act that it is a genuine document. The notification has to be, in any case, in the form of a document and its publication, has to be through the official Gazette. The question in these circumstances, therefore, arises as to how the contents of the notification, which is in the form of a document, can be proved. The complete answer to that question, in my view, is provided by the provisions of Section 61, Evidence Act. That section reads: "The contents of documents may be proved either by primary or by secondary evidence." What constitutes primary evidence in the case of a document is defined in Section 62. The secondary evidence is defined in Section 63, and under Clause (5) of that section an oral account of the contents of a document given by some person who has himself seen it is also a secondary evidence. But Section 64 says that "documents must be proved by primary evidence except in the cases hereinafter mentioned". Section 65 gives the list of cases in which secondary evidence may be given of the existence, condition or contents of a document. It has got seven clauses. Clause (e) of that section speaks about a case when the original is a public document within the meaning of Section 74. In the present case the original of the notification is in the form of an official Gazette, which, u/s 74, Evidence Act, is a public document. As to such document the provision laid down, in Section 65 says that "a certified copy of the document, but no other kind of secondary evidence, is admissible". In this view of the provisions of law, I think, the notification u/s 30, Bihar Private Protected Forests Act, 1947, being in the form of a public document, namely, the official Gazette, cannot be proved by any other kind of secondary evidence save by its certified copy.

In cases, where, however, admission of the document is to be relied upon in order to be exempted from the liability of proving the contents of the document, that admission has to be in writing by the person against whom it is proposed to be proved or by his representative-in-interest and then in that case that written admission is admissible as the secondary evidence of the document. In this connection a reference to the provisions of Section 22, Evidence Act is also helpful. It says.

"Oral admissions as to the contents of a document are not relevant, unless and until the party proposing to prove them shows that, he is entitled to give secondary evidence of the contents of such document under the rules hereinafter contained, or unless the genuineness of a document produced is in question." In the face of these provisions of law under the Evidence Act, I think, it is hardly permissible for the prosecution to prove the fact that the particular private forest is a private protected forest by any other evidence excepting the Gazette or its certified copy. In the case reported in -- Parhan Mahto Vs. Divisional Forest Officer, , decided earlier by me I held: "Therefore, in the absence of the

notification itself specifying therein definitely the limits of the forest and the publication of the same in the official Gazette, it cannot be held on the basis of the materials on the record of this case that Pokharia forest has been constituted a private protected forest."

In that case I had relied on the decisions of -- Mansid Oraon and Another Vs. The King, and -- "Lala Balaram Lal v. The State", in Cri. Revn. No. 374 of 1951 (Pat) CO. Unfortunately neither of them is the judgment of a Bench.

The one reported in -- Mansid Oraon and Another Vs. The King, , is the judgment by Agarwala C. J. That case was in relation to the contravention of the provisions of the Forest Act of 1927. The provisions of that Act are, however, similar to those given in the Bihar Private Protected Forests Act of 1947. In that case Agarwala C. J. observed:

"It may be that they are so; but for the purpose of proving the guilt of the petitioners it is necessary to show not only that they did the. acts mentioned in Clauses (f) and (h.) of Section 26(1), but also that they were not entitled to do those acts because there had been a notification issued u/s 20(1) specifying the limits of the forest and that the land in question fell within those limits."

Further on he said:

"Neither the Public Prosecutors nor the magistracy seem to take the slightest care to bring on to the record those notifications and orders which are essential for proving that the accused has acted in contravention of the law. Until they do so, it seems to be a waste of public time and money to prosecute at all, because whenever convictions are challenged in this Court they have to be set aside when there are omissions of this nature."

This observation, if I may say so with all respect to the learned Chief Justice is perfectly consistent with the law, and in clear words it has been laid down therein that the fact of the forest being governed by the Forest Act of 1927 can be proved only by the production of the notification published in the Gazette. Similar view was taken in the case in -- "Cri. Revn. No. 374 of 1951 (Pat) (C)" decided by Rai J. That was a case directly u/s 49(a), Bihar Private Forests Act (Bihar Act 9= of 1948). Rai J. observed therein:

"The learned counsel for the State, in reply, contended that it was nowhere objected on behalf of the accused that the forest in question is not a private protected forest. He also referred to the evidence of two of the P. Ws., namely, P. Ws. 1 and 2, who said in their evidence that the forest in question was Government forest. In my opinion, none of these two grounds can be of any assistance to the prosecution in the present case. What the prosecution had to prove was that the forest in question was a "private protected forest" as defined in the Act which could be done by bringing on record the notification published in accordance with Section 30 of the Act,"

This observation is also, if I may say so with all respect to the learned Judge, in

conformity with the view taken by the learned Chief Justice Agarwala.

12. The learned Advocate-General has drawn my attention to the decision in the case of --"Anpa Majhi v. "Divisional Forest Officer, Dhal-bhum", in Cri. Ref. No. 52 of 1952, decided by Das J. on 20-11-1952 (D). That was also a case u/s 49(c), Bihar Private Forests Act. Therein Das J. observed:

"The main ground on which the learned Deputy Commissioner has made the reference is that the learned Magistrate was wrong in convicting the accused persons, because there was no evidence on the record that the forest in which the accused persons cultivated a piece of land was a private forest within the meaning of the Act. The learned Deputy Commissioner referred to the fact that the notification u/s 30 of the Act was not produced by the prosecution. He also referred to the fact that the Forest Guard, who first detected the unauthorised cultivation, was not examined by the prosecution. However, the learned Deputy Commissioner himself points out, as was also pointed out by the Magistrate, that there was evidence of several witnesses who said that the forest in question was a private protected forest demarcated by boundary pillars on all sides. The same witnesses said that the piece of land which the accused persons cultivated was within the demarcated area...."

Having recorded these facts Das J. held:

"I do not understand how in these circumstances it can be said that there was no evidence to show that the forest in question was a private protected forest or that the land which the accused persons cultivated was not within the private protected forest. As a matter of fact, the accused persons did not even challenge that the forest in question was a private protected forest. In these circumstances, I do not think that the principle laid down in -- Parhan Mahto Vs. Divisional Forest Officer, has any application."

The learned Advocate-General was, I think, right in relying on this decision in support of the contention that the fact that a forest is a private protected forest as contemplated by Section 30, Bihar Private Protected Forests Act of 1947 can be proved by oral evidence as well especially when the accused did not challenge the fact that the forest in question was a private protected forest. With all respect to the opinion expressed by Das J. I have however my own doubts whether oral evidence can at all be permissible in a case like this, except in a manner provided by law as already stated. To me it appears that perhaps this question was not at all raised before the learned Judge. But even if for the sake of argument it be accepted that by implication that point was raised and decided in that case in the form suggested by the Advocate-General, I, with all respect to the learned Judge, think that to that extent the proposition laid down there is not supported by law.

13. The broad fact that has to be always kept in view in order to come to a correct conclusion on the point raised in the present case is that a private protected forest is a creature of a document which has to be, according to the

provisions of Section 30, Bihar Private Protected Forests Act, 1947, published by the notification in the official Gazette. The prosecution, therefore, in order to bring into operation the provisions of the Special Act, e.g., the Bihar Private Protected Forests Act of 1947, has to prove that a forest has been constituted according to law as a private protected forest. That can be only done in such cases by the production of the Gazette or its certified copy or by proving the admission as contemplated by the provisions of Section 22, Evidence Act.

14. In the present case the State did not take the trouble either to produce the Gazette or its certified, copy nor did it claim to rely on the admission made by the accused party in a manner contemplated by law. Therefore, in the absence of legal evidence sufficient to prove according to law the fact that Ghasko jungle has been constituted a private protected forest, the order convicting the petitioners for contravening the provisions of the Bihar Private Protected Forests Act of 1947 is not maintainable in law.

15. In the result, therefore, the conviction and sentence imposed upon the petitioners for the reasons stated above are accordingly set aside and the reference is accepted.