

(2015) 09 JH CK 0022
In the Jharkhand High Court
Case No : Criminal M.P. No. 1159 of 2006

Ram Narayan Rai and Others

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2
Forest Act, 1927 — Section 29, 30, 33

Citation : (2015) 4 JLJR 61

Hon'ble Judges : Harish Chandra Mishra, J.

Bench : Single Bench

Advocate : Rajesh Lala and Om Prakash Pandey, for the Appellant; Laxmi Murmu, for the Respondent

Judgement

Harish Chandra Mishra, J.—Heard learned counsel for the petitioners and learned counsel for the opposite parties. This application has been filed for quashing the order dated 30.11.2004 passed by the learned Sub-Divisional Judicial Magistrate, Madhupur at Deoghar, in GOCR Case No. 61 of 2004, whereby the cognizance has been against the petitioners for the offence under Section 33 of the Indian Forest Act and Section 2 of the Forest (Conservation) Act. The petitioners have also prayed for quashing the entire criminal proceeding against them in the said case.

2. The offence report was submitted by the forest guard stating that on 11.2.2004 at about 9 AM, he found the officials of ECL, Chitra, dumping the coal in Bhawanipur and Tulsidawar protected forests. On the basis of the offence report, the prosecution report was also submitted with the same allegations, in which the petitioners have been made accused, being the officials of S.P. Mines, Chitra, belonging to Eastern Coal Fields Ltd. In the prosecution report, it is stated that the forest in question was notified by notification No. C/F 17044/55-2612-R dated 26.8.1955 and accordingly, it is alleged that the petitioners had committed the offence under Section 33 of the Indian Forest Act and Section 2 of the Forest

(Conservation) Act, and on the basis of the prosecution report, the Court below has taken cognizance against the petitioners as aforesaid.

3. Learned counsel for the petitioners has taken a short point challenging the order taking cognizance and the criminal proceeding against the petitioners. It is submitted that the prosecution report clearly shows that the notification declaring the forest to be protected forest, was issued on 26.8.1955 itself. It is submitted that under the provision of Section 30 of the Indian Forest Act, the validity of the notification is only for 30 years and accordingly, its validity expired in the year 1985. Learned counsel submitted that since the notification had lost its validity, no offence can be said to be committed under Section 33 of the Indian Forest Act. It has also been submitted that Section 2 of the Forest (Conservation) Act is not a penal provision and taking cognizance under the said section shows complete non-application of judicial mind by the Court below. Learned counsel accordingly, submitted that the impugned order, as also the entire criminal proceeding against the petitioners, cannot be sustained in the eyes of law.

4. Learned counsel for the State on the other hand has opposed the prayer and has submitted that coal was being dumped in the protected forests under the directions of the petitioners, who are the officials of S.P. Mines Chitra, and accordingly, the offence is clearly made out against them.

5. Having heard learned counsels for both the sides and upon going through the record, I find that from the prosecution report or from the counter affidavit, it is not at all apparent that whether the notification dated 26.8.1955 was issued under Section 29 of the Indian Forest Act or under Section 30 of the Indian Forest Act. If there is no notification under Section 30 of the Indian Forest Act, no offence can be said to be committed under Section 33 of the said Act. If the said notification was issued under Section 30 of the Act, it certainly had lost its life on the expiry of the period of 30 years. There is nothing either in the prosecution report or in the counter affidavit to show that fresh notification was issued or the said notification was revived by the State Government declaring the forest to be the protected forest. The law is well settled in this regard by catena of decisions of this Court, such as, Jagdish Mehta Vs. State of Jharkhand and Others, , Anup Kumar vs. State of Jharkhand, reported in 2012 (2) East. Cr. C. 21 (Jhr.), Daso Ram & Ors. vs. State of Jharkhand, reported in 2013 (1) East. Cr. C. 247 (Jhr.), wherein it has been held that upon expiry of notification issued under Section 30 of the Indian Forest Act, the land in question cannot be termed to be a protected forest, consequently no offence can be said to be made out under Section 33 of the Indian Forest Act. I also find force in the submission of the learned counsel for the petitioners that Section 2 of the Forest (Conservation) Act is not a penal provision and accordingly, the order taking cognizance under Section 2 of the Forest (Conservation) Act clearly shows complete non-application of the judicial mind. For the aforementioned reasons, I find that the impugned order taking cognizance against the petitioners cannot be

sustained in the eyes of law. Accordingly, the impugned order dated 30.11.2004 passed by the learned Sub-Divisional Judicial Magistrate, Madhupur at Deoghar, in GOCR Case No. 61 of 2004, as also the entire criminal proceeding against the petitioners in the said case, are hereby, quashed. This application is accordingly, allowed.