

(2004) 03 AHC CK 0072
In the Allahabad High Court
Case No : Criminal Application No. 809 of 1999

Sanjeev Nath Bhaskar and Another	Vs	APPELLANT
State of U.P. and Another		RESPONDENT

Date of Decision : 15-03-2004

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Mines Act, 1952 — Section 52, 53
Penal Code, 1860 (IPC) — Section 379

Citation : (2005) CriLJ 187

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Advocate : G.S. Chaturvedi and Samit Gopal, for the Appellant; A.G.A., for the Respondent

Final Decision : Allowed

Judgement

Poonam Srivastava, J.—Heard Sri G. S. Chaturvedi Senior Advocate, assisted by Sri Samit Gopal, Advocate for the applicants and the learned A.G.A. for the opposite party No. 1.

2. Notice to opposite party No. 2 was served but no counter affidavit has been filed and no counsel has put his appearance on behalf of contesting opposite party.

3. Prayer in this application is for quashing of the charge sheet annexure No. 2 and the order dated 15-3-1999 passed by A.C.J.M. Mahroni. Facts of the case is, mining lease located at Pardhankuan in Pargana Sanpur District Jhansi (now Lalitpur) Tehsil Mahroni bearing cadestral survey No. 760 having an area 47.24 acres was sanctioned to Ishwar Industries Ltd. for a period of 20 years with effect from 1 -5-1964 for carrying out mining work. Renewal of lease was applied on 11-4-1983, which was rejected by the State Government, order of rejection was challenged before Delhi High Court and interim order was passed in favour of leasee on 8th August, 1988 by a Division Bench in pursuant thereof the

applicants are continuing with the mining work. F.I.R. was lodged against the applicants at case No. 140 of 1998 u/s 379 I.P.C., Section 26 Forest (Conservation Act) 1980 and Section 52/53 of the Mines Act 1952. Writ petition No. 3862 of 1998 was filed in this Court for quashing of FIR and stay of arrest of the applicants, a Division Bench of this Court, vide order dated 7-9-1998 granted time to the State Government and the S.S.P. to file counter affidavit and also stayed the arrest of the applicants. Before passing interim order, the Court had perused lease deed and it was clearly stated in the order that the petitioners (applicants) are permitted to use the area for carrying out mining operation and were permitted to cut down the trees etc. for which the applicants were entitled to pay compensation specified by the Collector of the District as per the terms of lease deed. The said compensation will be treated as an implied consent, copy of the interim order has been annexed as annexure No. 4 to the affidavit. It has been stated in paragraph 5 of the affidavit that State has not filed any counter affidavit till date which is not disputed. Charge sheet has been filed against the applicants and the C.J.M. summoned the applicants vide order dated 15-3-1999, which is sought to be quashed.

4. Specific allegation against the applicants is that there were 2000 trees on the land, which have been cut down illegally by the applicants and thereby an offence u/s 379 I.P.C. is constituted against the applicants.

5. Figure of 2000 trees was arrived on the basis of an approximate assessment on inspection of an area measuring 20 feet x 20 feet and the number of trees standing on the said area. There were 20 trees as such on the basis of said ratio in an area of 200 meters x 50 meters, which was excavated, there ought to have been 2000 trees but there are only 60 trees. Conclusion has been arrived at by the complainant that 1940 trees must have been destroyed by the applicants consequently offence was committed. Statement of Ram Sundar Yadav, complainant has also been annexed as annexure No. 10, which is only repetition of the FIR Annexure No. 6 to the affidavit is a copy of the letter dated 18-3-1998 vide letter No. 1311/18-11-98-946/87 from Sri Rajbeer Singh Special Secretary, State of U.P. wherein it has specifically been stated that the land given for mining purpose does not fall within the Forest Conservation Act 1980, Xerox copy of the Khasar for Fasli years 1401, 1403, 1404 are annexed as annexure No. 7, 8 and 9 and the column which mentions number of big trees in the area shown in the Khasara is "Nil". Argument advanced on behalf of the applicant is that since the said evidence have not been controverted by the learned A.G.A. neither in the present application nor in the writ petition, which is still pending, there appears to be no prima facie evidence to constitute any offence whatsoever against the applicants. The second argument is Section 52 of the Mines Act 1952 relates to "Annual Leave with Wages" and Section 53 of the said Act "Wages during Leave Period" as such these provisions are absolutely irrelevant and not applicable to the facts of the present case and no offence under the Mines Act 1952 is made out against the applicants as shown in the charge sheet and FIR. So far the Mines and Minerals (Regulation and Development) Act 1957 is concerned, Act

consists of only 33 Sections as such it is also beyond imagination that any offence under the said Act has been committed by the applicants. No offence under the Forest Conservation Act 1980 is made out as alleged by the prosecution as the land in question does not fall within notified forest area. Complete statement u/s 161 Cr. P.C. has also been annexed, perusal of the said statement do not alter the situation since it is only repetition of what has been said in the FIR. Learned counsel for the applicants has placed reliance on a number of decisions of Apex Court as well as this Court, whether the charge sheet and the proceedings initiated on the basis of the charge sheet can be quashed in exercise of powers u/s 482 Cr. P.C. As far as back in the years 1960, Apex Court in the case of R.P. Kapur Vs. The State of Punjab, carved out broad categories whether the proceedings could be interfered and quashed in exercise of inherent powers. Submission of the learned counsel is that present case is squarely covered by the third category. Allegation made against the applicants though constitute an offence alleged but there is either no legal evidence in support of the case or whatever evidence is adduced clearly or manifestly fails to prove the charge. In the instant case, allegation of theft is on the basis of oral calculation, which stand completely belied on the face of the documents of the prosecution itself such as letter of Special Secretary, Government of U. P. and various Khasras. Offences alleged do not come within the definition of the said offence of the Act, Forest Conservation Act 1980. Mines Act 1952 as well as Mines and Minerals (Regulation and Development) Act 1957, there is no evidence of theft whatsoever, it is in these circumstances, the request for quashing of the charge sheet and the proceedings initiated on its basis are prayed for. Reliance has also been placed in a number of decisions of the Apex Court, State of Karnataka v. M. Devendrappa 2003 (3) SCC 89. Argument advanced on behalf of the applicants has not been disputed and the State has also not challenged the documents such as letter and Khasras etc. annexed with the application. In the circumstances, it is evident that continuation of the proceedings on the basis of F.I.R. charge sheet dated 16-2-1999 and the summoning order dated 15-3-1999 are absolutely frivolous. On the bare reading of the undisputed documents brought on record and the proceedings, if allowed to continue will amount to an abuse of process of Court. Guidelines laid down in the case of R.P. Kapoor (Supra) has been followed in catena of decisions of the Apex Court as well as by this Court State of Haryana and others Vs. Ch. Bhajan Lal and others, ; Surendra Nath Mohanty and Anr Vs. State of Orissa, , B.S. Joshi and Others Vs. State of Haryana and Another, and Union of India (UOI) Vs. Prakash P. Hinduja and Another, .

6. Looking into facts and circumstances of the case, I am of the view that continuation of the proceedings on the basis of the summoning order dated 15-3-1999 will not yield any fruitful result. Charge sheet dated 16-2-1999 and order dated 15-3-1999 consequent proceedings on the basis of the said order are hereby quashed. Present application u/s 482 Cr. P.C. is allowed. There shall be no order as to cost.