

(2011) 11 PAT CK 0020
In the Patna High Court
Case No : Criminal Writ No. 496 of 2001

Senior Divisional Engineer(2), Eastern Railway, Mugalsarai
and Abhay Kumar Pandey

APPELLANT

Vs

The State of Bihar, The Secretary, Department of Forest and
Environment, Government of Bihar, Patna, Divisional Forest
Officer, Shahabad Range, Sasaram, District-Rohtas and Sri
Suresh Prasad, Range Officer, Shahabad Range, Rohtas

RESPONDENT

Date of Decision : 18-11-2011

Acts Referred:

Citation : (2011) 11 PAT CK 0020

Judgement

Aditya Kumar Trivedi

1. Petitioner by virtue of their post as well as name, has filed instant writ with a prayer for quashing of Forest Case No.172 of 2001 pending in the court of Chief Judicial Magistrate, Rohtas at Sasaram u/s 33 read with Section 41, 42 of the Indian Forest Act.
2. Forest Range Officer filed written report on 23.04.2001 before the learned CJM disclosing therein that on the same day while he was patrolling Amri reserve forest, seized tractor bearing Registration No.BR 24B 0663 laden with stone. The driver, contractor and laborers have made their safe escape. It has further been disclosed that Railway Department is illegally making stone quarry through contractor. At an earlier occasion too on 23.4.2001 a tractor was seized for which Complaint Petition No.172/2001 was filed. The aforesaid complaint petition was annexed with seizure list and other relevant documents.
3. It has been submitted on behalf of the petitioner that petitioner no.2 happens to be the Senior Divisional Owner (Co-ord), Railway Mugalsarai and he has been made an accused by his name as well as designation although admittedly there happens to be total absence of petitioner at the spot in any capacity. Nay there was any occasion for the complainant to know about the petitioners. Then submitted that the real fact is that by a notification dated 10th October, 1896

published in extraordinary gazette dated 14th October, 1896 Railway had acquired certain area of lands lying at different village wherein the village Amri also lies. The aforesaid acquisition was for laying the railway lines as well as for quarry to have the stones particles to make the railway line effective for transportation and therefore was in public interest. Khatiyani was accordingly prepared in name of railway. The site plan was accordingly prepared. The railway line passes through popularly known as "grand cord line" and those documents happens to be Annexure 2, 3, 4, 6, 7 of the writ petition. Then submitted that by Annexure-5, the Bihar Government have notified the forest standing over lands of different villages including Amri and classified it as reserve forest. However, by such action there has not been deletion of Annexure-2 or other Annexure, so far status of railway was concerned, nay the aforesaid notification pondered upon the land already acquired by the railway. So submitted that launching of prosecution will be nothing but an abuse of process of the court.

4. At the other hand the learned G.A.-9 has opposed the prayer by supporting its pleading and submitted that all those events happens to be factual one and so it is subject to verification during course of trial. Therefore, the prosecution is fit to be allowed to continue.

5. Also submitted that the government had controverted the pleading so far it relate with acquisition of land by railway, as is evident from different paras of the counter affidavit. When the acquisition was not made, then these were not question of entitlement as claimed. Further submitted that recording in Khatiyani wrongly has been treated out and Collector has been approached for its correction. Also submitted that steps were taken in light of direction given by the Hon"ble Apex Court in C.W.J.C. No.202/95. Also submitted that the petitioner was indulged in illegal activities without taking permission from the Central Government.

6. The impulsive approach for quashing of criminal prosecution either u/s 482 of the Cr.P.C. or under writ jurisdiction covered under Article 226 of the Constitution stood at par and still the clauses identified and defined in a leading case known as State of Haryana and others Vs. Ch. Bhajan Lal and others, and are:-

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers u/s 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, on investigation is permitted by a police officer without an order of a Magistrate as contemplated u/s 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient grounds for proceedings against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceedings is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

7. Now the facts of the case is taken up to see whether any of the ingredient so framed is being satisfied? Admittedly petitioner is one of the senior most officer of the railway and he has been made an accused by virtue of his post as well as by name even though he was neither present at the spot, nor he indulged in his personal capacity nay he was indulged in day-to-day affair. At the other hand the complaint itself discloses that quarry was running by the railway, a wing of Central Government. From Annexure-2 it is evident that the land was already acquired for laying down the railway line and the same happens to be in its continuance since 1898. Khatiyani stood in its name. Annexure-5, a notification of the Bihar Government Identifying and Recognizing certain areas of different villages including the village in question as reserved forest even does not encroach over the same. (much less the exact P.O. is also not pointed out in complaint) In the aforesaid background, no prosecution can be allowed to proceed for violation of any of the provision of Indian Forest Act (Bihar Amendment). At this juncture it would be pertinent to incorporate the salient feature for declaring the reserve forest which is to be identified as per section 3 of the Indian Forest Act and has to be notified in accordance with Section 4 of the Act. Sub-section (b) prescribes the mode of its demarcation in following manner. (b) specifying as nearly as possible the situation and limits of such land and the aforesaid notification is to be circulated and after having hearing over the objections if any and making such inquiry finally it has to be notified in accordance with Section 20 of the Act. Section 23 prescribes a forbidding proviso by which any right of an individual is derecognized. That means to say the preliminary notification as per Section 4 and final notification as per Section 20 of the Act must locate and identify the identity of the lands which has been covered and notified as a reserve forest. There is no description with regard to total area of Amri village and further how much area of total area has been notified as

reserved forest although Annexure-5 speaks 57.20 Acres thereof. Annexure-2, the land acquired by the railway covers an area of 7.16 Acre which was further expanded by notification no. 22 December, 1938 (Annexure-4) 42 Bigha 15 Kattha 14 Chitta, part survey Plot No.615 which does not lie within as is evident from Annexure-5. Therefore, the present prosecution appears to be misconceived and is accordingly quashed.