

(1983) 08 AHC CK 0055

In the Allahabad High Court

Case No : Criminal Misc. Application No. 6767 of 1983 & Criminal Miscellaneous Application No. 6767 of 1983

Shyam Behari Lal and Others

APPELLANT

Vs

Forest Department and Another

RESPONDENT

Date of Decision : 25-08-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145, 195, 200, 202, 482
Forest Act, 1927 — Section 26, 28, 5
Penal Code, 1860 (IPC) — Section 188, 427, 447

Citation : (1983) 7 ACR 477

Hon'ble Judges : M. Wahajuddin, J

Bench : Single Bench

Advocate : Satya Prakash Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

M. Wahajuddin, J.—The applicants have come forward with the prayer that the complaint against them under Sections 26 and 28 of the Indian Forest Act, and the order of the Magistrate summoning them as well as the entire criminal proceedings against them may be quashed. It would appear that a complaint under Sections 26 and 28 of the Indian Forest Act has been filed by the Forest Guard against the applicants on the allegations that on 18-5-1982 at about 4 p.m. the complainant accompanied by another Forest Guard was taking round of the forest and reached Reserved Forest Tulsi Compartment No. 1 and noticed that the accused persons have fallen down two green Sakhu trees and were cutting them into pieces and noticing the forest guard they fled away. The boot of the trees were measured. The cut timber pieces were brought to the Forest out post with the memo and hence the accused persons had committed an offence u/s 26 read with Section 28 of (he Forest Act and need be punished.

2. Two points have been urged. The first point has been urged is that the present complaint was not covered within the provision of Section 195 Code of Criminal

Procedure, and the Magistrate should have complied with the provisions of Sections 200 and 202 Code of Criminal Procedure which was not done. It was also urged that prior to this complaint the Forest Department had falsely implicated some of the accused persons in another case resulting in acquittal. It is also urged that there is no allegation in the complaint that the forest is a reserved forest and there is no notification that the forest comes under the Reserved Forest Act.

3. The first point that would arise for consideration is whether it was necessarily to examine the complainant. It was urged that Section 195 Code of Criminal Procedure dispensing with the examination of the Presiding Officer of the court filing the complaint is not attracted. So far as that Section is concerned, it deals with the filing of the complaint in respect of certain offences specified therein except on the complaint in writing of the Public servant concerned or of some other public servant, and the other Sub-section deals with the filing of the complaint by the court in respect of certain offences. The present case does not relate to those offences nor Section 195 Code of Criminal Procedure is appropriate section to be looked into. It is Section 200(a) of the proviso which is relevant. The proviso runs thus "when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses if a public servant acting or purporting to act in discharge of his official duties or a court has made the complaint." Reliance was placed upon the case of *Nalini Kumar Dey v. State of Tripura* AIR 1953 Tri 4. In that case a forest guard made a report of commission of an offence under the provisions of Tripura Rice & Paddy Embargo Order and the court holding that it was none of the official duties of the forest guard to look after any contravention of those provisions and to detect commission of any offence therein in that context held that the report made by him cannot be deemed to be a complaint by a public servant acting or purporting to act in the discharge of official duties as such. It was for that consideration that it was further held that examination of the complainant was not exempted. This ruling cannot be applicable to this case and is distinguishable. The other case cited is that of *Kalu Munchi v. State of Assam* AIR 1965 G&N 29. Actually that was a complaint filed by a Magistrate and naturally it had to be considered whether it was covered by Section 195 Code of Criminal Procedure which deals with such complaints Offences in respect of which the complaint was filed were Sections 447, 427 and 188 IPC. As regards offence u/s 188 IPC it was held that the order u/s 145 Code of Criminal Procedure prohibiting any person was not duly promulgated. Regarding the other Sections it was held that they are not covered u/s 195 Code of Criminal Procedure as various offences to which Section 195 Code of Criminal Procedure relates are enumerated therein and Sections 447 and 427 are not covered in them, so for that consideration it was held that the examination of the complainant was not dispensed with under the provisions of law and he should have been examined.

4. In this case the crux of the matter is (a) whether forest guard is a public officer, (b) whether detection of an offence and filing of complaint under the

Forest Act of the present nature can be considered as in discharge of duties. Forest Guards are appointed to keep a watch and to check unauthorised clearance and such other offence concerned with other Forests Act providing etc. It will be their duty to report if any person is found to carry unauthorised cutting of trees, green trees in particular. Section 26 of the Indian Forest Act expressly forbids any fresh clearing prohibited by Section 5 of the Forest Act. It also forbids cutting and dragging any timber. Section 5 of the Act Lays down that no fresh clearance will be made. Cutting green trees would prima facie amount to clearance. When that is the position, the forest guard is duty bound to report such unauthorised clearance and/cutting of green trees and to lodge a complaint, as such cutting etc. would amount to offence under Forest Act and when that is the position Forest guard has acted in discharge of his duties by lodging the complaint and consequently he is exempted from being examined u/s 200 proviso (a) of the Code of Criminal Procedure and the argument to the contrary has no force.

5. The next point urged is that it has to be proved that forest is a reserved forest. In the complaint there is a recital that it is reserved forest and now it is a matter of evidence by way of proof that necessary notifications were made and the area is within reserved forest or within village forests as contemplated under Sections 26 and 28 of the Indian Forest Act. This Court will not function as court of facts. The matter has to be considered and examined by the Magistrate during trial and such pleas are always open to the applicants and can be taken there. I do not find any force in this application u/s 482 Code of Criminal Procedure and it is summarily rejected.