
(2013) 08 AHC CK 0009

In the Allahabad High Court

Case No : Criminal Miscellaneous Application No. 1118 of 2002

Smt. Vijay Devi and Another

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2014) 1 ACR 578 : (2014) 4 ALJ 122 : (2013) 83 ALLCC 907

Hon'ble Judges : Ramesh Sinha, J

Bench : Single Bench

Advocate : Sushil Shukla and Rama Shanker Mishra, for the Appellant;

Judgement

Ramesh Sinha, J.—Heard Sri Rama Shanker Mishra, learned Counsel for the applicants and learned A.G.A. for the State. This application u/s 482 Cr.P.C. has been filed for quashing the entire proceeding of Criminal Case No. 1203 of 1998 under sections 379, 411 IPC and section 4/10 of U.P. Protection of Trees Act, 1976, P.S. Salempur, district Bulandshahr, pending currently in the Court of A.C.J.M. Court No. 3, Bulandshahr.

2. The prosecution case in brief is that on 22.7.1998 at about 11 p.m. when the police party was on it's patrolling duty, an information was received that Smt. Vijay Devi, the Gram Pradhan of the village and her husband Rameshwar Dayal had got the green woods of Sheesham, Neem and Saijan tree of the Gram Samaj which were cut down and were hidden in the Jungle and was likely to be taken to some other place in the midnight. On the said information, the two police constables namely Sukhbir Singh and Mohar Singh who were on patrolling duty had reached at Marauni Tiraha at about 11.30 hours. They saw truck No. U.P. 13-0828 coming from the village Marauni and the said truck was stopped at that Tiraha and was checked by the constables and they found that the truck was loaded with green woods of Sheesham, Neem and Saijan trees. A person sitting on the said truck Prem Chandra informed the police party that the said trees were cut down by the husband of the Pradhan namely Rameshwar Dayal and he showed some papers of village Pradhan namely Smt. Vijay Devi regarding the

said woods on which there was signature of the village Pradhan. It was further informed that they did not have permission for cutting down the trees. The said truck loaded with the woods were seized and kept in village Parogani. It was informed by the truck driver that the Pradhan had stated that in the night, there is police checking at various places, hence the said truck was being taken to village Dewai. The Police party suspecting that the Pradhan of the village and her husband had sold the said woods in an illegal manner. Hence the case was registered for the offence u/s 4/10 of U.P. Protection of Trees Act, 1976 and section 379. IPC. The FIR was lodged against one Shyamveer who is said to be the purchaser of the woods of the said trees. Padam Singh was the driver of the said truck and Prem Chand who had got the trees cut down also had share in the woods of the said trees. The driver was not having driving license nor any papers, hence the driver of the truck was also challaned u/s 183, 192, 194, 196 and 207 of Motor Vehicles Act.

3. The FIR of the incident was lodged by a constable of Police Station Salempur, district Bulandshahr as case crime No. 60/1998 u/s 379, 411 IPC and 4/10 of U.P. Protection of Trees Act, 1976 on 22.7.1998 at 18 hours. The investigation was carried out and the charge sheet was submitted against the applicants on 26.9.1998 and cognizance was taken by the learned Magistrate. Thereafter applicants moved discharge application before the learned Magistrate and the same was rejected vide order dated 20.7.2001.

4. The contention of learned Counsel for the applicants is that the applicant No. 1 Smt. Vijay Devi is the Pradhan of the village and her husband applicant No. 2 namely Rameshwar Dayal is a Farmer. On 26.6.1998 a general body meeting of Land Management Committee was held in the Gram Sabha which was headed by the applicant No. 1 and attended by the other members. In the said meeting one of the member namely Chotey Lal had proposed that certain dry trees are standing on the Gram Sabha land over plot No. 209, measuring 0.063 hectare which was cut down by the villagers and were lying on the ground, thus economical loss was being caused to Gram Sabha. He proposed to auction those trees which were lying as dead woods which may add to an income of the Gram Sabha. His proposal was unanimously approved by the Land Management Committee and resolution was passed and necessary permission for auction was obtained from the S.D.M. Shikarpur. Copy of the said resolution of Gram Sabha has been annexed as Annexure No. 1.

5. In pursuance of the said resolution, Land Management Committee dated 26.5.1998 necessary permission for public auction of the aforesaid trees was obtained and granted on 15.7.1998 by the S.D.M. Shikarpur after the proressary inquiry in that respect was ducted by the Lekhpal and other revenue officers who submitted the report before the S.D.M. Copy of the report of the Lekhpal and other revenue authorities and the order granting permission for auction of the S.D.M. has been annexed on pages 17-18 of the accompanying affidavit Ultimately, a general body meeting of the Land Management "Committee was

held on 19.7.1998 and public auction in respect of the aforesaid trees of Gaon Sabha was held and the highest bidding of Rs. 3,200/- was made by one Shyamveer and accordingly his bid was accepted and approved by the Land Management Committee on the same day i.e. 19.7.1998. The said bidder deposited the money in the account of Gram Sabha with Punjab National Bank on 21.7.1998 and formal permission was granted to the said bidder Shyamveer by the applicant No. 1 Smt. Vijay Devi in her capacity of Chairman of Gram Sabha. A photocopy of the receipt of the money deposit is also annexed on page 23 of the accompanying affidavit.

6. It was further urged that the bidder Shyamveer along with other persons were taking away the woods on 27.7.1998 at about 1 p.m. on the truck in question to his destination, the said truck was intercepted by the two constables who without taking into account the aforesaid fact and documents have seized the said truck and lodged a false FIR against the applicants and other persons for illegally cutting down the trees and committing theft of the same which were the property of Gram Sabha. The Investigating Officer of the case without inquiring the correct facts of the case, lodged against the applicants submitted charge sheet against the applicants for offence u/s 379/411 IPC and 4/10 of U.P. Protection of Trees Act, 1976. The learned Magistrate also in most mechanical manner has taken cognizance has summoned the applicants for the aforesaid offence and also illegally rejected the discharge application of the applicants without considering and appreciating the aforesaid documents for the public auction of the disputed trees of the Gram Sabha and the necessary permission of the S.D.M which is also on record.

7. He further submitted that the allegations in the FIR and charge sheet no offence is made out against the applicants.

8. He further submits that though the time was granted to the State to file counter affidavit but till date no counter affidavit has been filed, hence the averments made in the present affidavit filed in support of the 482 Cr.P.C. application stands un rebutted.

9. Learned AGA has admitted the fact that till date no counter affidavit has been filed by the State but he has opposed the prayer for quashing and submitted that the proceedings initiated against the applicants are in consonance with law and the charge sheet discloses cognizable offence against the applicants.

10. Considered the submissions of learned Counsel for the parties.

11. I have perused the entire material on record from which it is apparent that the applicant No. 1 Smt. Vijay Devi who is the Gram Pradhan of the village had passed a resolution for the public auction of the disputed trees along with other members of the Land Management Committee of the Gram Sabha and in the said resolution, a decision was taken for the auction of the disputed trees which was lying as dead woods so that it may not cause any financial loss to the Gram Sabha. The Land Management Committee also sought necessary permission from

the S.D.M. for the public auction of the said trees which was granted by the S.D.M. after necessary inquiry from the Lekhpal and other revenue authorities. The public auction was held after the permission of the S.D.M and the highest bidder Shyamveer who had purchased the said trees for Rs. 3,200/- and the said amount was deposited by him in the account of Gram Sabha with Punjab National Bank. A copy of the resolution of Land Management Committee and the necessary permission granted by the S.D.M. on the basis of which, a public auction was made and the money deposited by the highest bidder Shyamveer in the account of Gram Sabha, copy of the deposit receipts of Rs. 3,200/- is also on record. The charge-sheet submitted in the case by the Investigating Officer has not taken into account the aforesaid documents which were stated to be shown by the applicant No. 1 who was the village Pradhan to Investigating Officer of the case and in a most mechanical manner, the investigation was conducted by the Investigating Officer who on the basis of statements of police witnesses a charge-sheet was submitted by him and no independent witness has come forward to support the prosecution story. The learned Magistrate who has taken cognizance of the offence against the applicants has also in a most mechanical manner and summoned the applicants for trial for the aforesaid offence. When the discharge application was moved by the applicant that too was rejected by the learned Magistrate without appreciating the fact that there was permission from the S.D.M for the public auction and the money in question has also been deposited by Shyamveer, the highest bidder in the account of Gaon Sabha, the learned Magistrate has rejected the discharge application and passed the order dated 20.7.2001 which is not sustainable in the eyes of law.

12. Hence in view of the above discussions, no offence against the applicants is made out on the basis of impugned charge-sheet. Thus, the entire proceedings based on the impugned charge-sheet and the consequential proceedings are hereby quashed. The petition stands allowed.