

(1983) 08 SHI CK 0008
In the High Court Of Himachal Pradesh

The Municipal Corporation

APPELLANT

Vs

K.C. Khanna

RESPONDENT

Date of Decision : 29-08-1983

Acts Referred:

Forest Act, 1927 — Section 33

Himachal Pradesh Municipal Corporation Act, 1979 — Section 416

Citation : (1984) CriLJ 869 : (1983) 12 ILR HP 383

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Judgement

Vyas Dev Misra, C.J.—Shri Prem Chand, a Forest Guard of Municipal Corporation, Simla (the Corporation), has Khalini beat. On 15-3-1983 he was patrolling with a "B.O." and Pratap Singh, Forest Guard. In the compound of "Ravensdale", Chhota Simla, he saw that the owner of the house had kept one apple tree, one miscellaneous tree and 9 small saplings of apple in the shed. He reported the matter. In the report it was stated : "accused K.C. Khanna, s/o Kedar Nath, r/o Ravensdale, Chhota Simla-2, has been apprehended while causing damage to the jungle." It may straightway be noticed that the report is on a form printed in Hindi and this Forest Guard did not strike out alternatives which are printed in the form. In this report the name of one Ravi Kumar of Ladies Park, the Mall Simla, is mentioned as a witness. At the place where the signatures of the accused are required to be obtained, it is written : "was not present". In other words Shri K.C. Khanna was never contacted by this Forest Guard nor was he present at the time when the Forest Guard visited the said place. A formal complaint dated 19-5-1983 by the Tree Officer, who has been delegated and was exercising the powers of the Commissioner of the Corporation, was filed. Only Prem Chand, Forest Guard, and Ravi Kumar were mentioned as the witnesses. It was alleged that the aforementioned trees were cut in contravention of the provisions of Chapter XXII of the Himachal Pradesh Municipal Corporation Act, 1980 (the Act) and in contravention of the provisions of the Himachal Pradesh Municipal (Prevention of Soil Erosion and Hill Side Safety) Rules, 1975. It was

prayed that the accused be summoned u/s 416 of the Act and tried in accordance with law. When this matter came up before Shri Ram Lal Azad, Judicial Magistrate IInd Class, Simla, he directed the criminal Ahalmad "to check-up and put up on 27-5-1983." The Ahalmad reported: "this challans of Forest Act filed by the A.P. P. Forest which is in time. Challans filed with supurdnama accordingly. Submitted please." On 27-5-1983 Shri D. S. Mantan, Range Officer, was present for the complainant. The Magistrate ordered: "Report seen. The challan be registered. Accused be summoned for 27-6-1983."

2. Prem Chand, Forest Guard, again decided to look into the compound of the "Ravensdale" on 20-3-1983. He found two plum trees of class IV and two small apple saplings to have been cut and kept in the store. Prem Chand again put up a report about it on the similar printed form and in the same manner. This time one Gulam Kadir Naik was the witness. He referred the matter to "B.O." who put it up before the Tree Officer for filing a complaint u/s 416 of the Act. It is also dated 19-5-1983. The procedure followed was exactly the same as in respect of the earlier complaint and the same Magistrate issued summons to Shri K.C. Khanna as accused.

3. Now, the summonses were issued to Shri K.C. Khanna, in respect of an offence u/s 33, Forest Act, When this matter came to my notice, I decided to exercise my revisional powers and issued notices to the Corporation as well as to Shri K.C. Khanna as it appeared to me that the Magistrate had summoned Shri K.C. Khanna as an accused in routine without going through the record and without applying his mind.

4. Mr. D.K. Khanna, learned Counsel for the respondent Shri K.C. Khanna, pointed out that even if all the facts stated in the complaint are accepted as correct, no case was made out. He submitted that the cutting of fruit trees does not fall within the mischief of Section 404 read with Section 416 of the Act. However, Mr. Pratap Chand, learned Counsel for the Corporation, submits that all kinds of trees and even the shrubs can neither be pruned nor cut.

5. In order to appreciate the rival contentions of the parties, it is necessary to refer to relevant provisions of law in detail. Before the Municipal Corporation of Simla was formed under the Act, the city of Simla had a Municipal Committee which was constituted under the Himachal Pradesh Municipal Act, 1968. In 1975 Chapter 9-A relating to "Prevention of Soil Erosion and Hill Side Safety" was added. Section 216-A of this Chapter regulated the felling of trees within the municipal limits. The relevant part of this section reads:

(1) No person shall fell any tree whether belonging to him or otherwise of the prescribed class within the jurisdiction of any Municipal or Notified Area Committee in the State or of the Municipal Corporation, Simla, except under a permit obtained from the prescribed authority in the prescribed manner.

xx xx xx xx xx (4) The State Government may make rules consistent with this Act to carry out the purposes of this chapter and all such rules shall be laid, as

soon as may be, after these are made, before the Legislative Assembly while it is in session, for a total period of not less than fourteen days which may be comprised in one session or in two or more successive sessions and if before the expiry of the session in which it is so laid or the session aforesaid, the Assembly makes any modification in the rules or decides that the rules should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under such rules.

(emphasis supplied).

The State has made rules called the Himachal Pradesh Municipal (Prevention of Soil Erosion and Hill Side Safety) Rules, 1975, in exercise of the powers conferred by the aforementioned Sub-section (4) of Section 216-A of the Act. Rule 4 lays down the classification of trees. It reads :

The prescribed class of trees for the purposes of Chapter IX-A of the Act shall include deodar, Kail, chil, fir, oak and every other tree except fruit trees purely grown for horticultural purposes. (emphasis given).

6. Now, if this rule is in force, then admittedly no case is made out. But Mr. Pratap Chand says that this rule is no more in force, as Section 443 of the Act has repealed the Himachal Pradesh Municipal Act, in the area of Municipal Corporation of Simla. Before I deal with this contention I will like to refer to some other relevant provisions of the Act.

7. It is Section 404 of the Act which prohibits felling, cutting, damaging or destroying any tree. It reads :

Notwithstanding any custom, usage, contract or law for the time being in force, no person shall cut, damage, destroy, fell or remove any tree of the prescribed class, whether included in a private holding or not, within the jurisdiction of the Municipal Corporation, except with prior permission obtained from the Tree. Authority under the provisions made in this chapter or any rules made thereunder. (emphasis given).

8. It is Section 416 of the same Chapter which lays down the penalty. It reads :

Whoever fells or abets the felling of any tree or causes any tree to be felled in contravention of the provisions of this chapter or any rules made thereunder without any reasonable excuse, comply with any order issued or conditions imposed by the Tree Officer or any other officer subordinate to him in the discharge of their functions under the provisions of this chapter shall On conviction be punished with imprisonment which may extend to three months and with fine which shall not be less than one thousand rupees.

Explanation- For the purposes of this section a breach of the provisions of this chapter or abetment of breach thereof in respect of cutting or destroying each

tree shall be a separate offence.

9. It will be noticed that Section 404 prohibits felling and cutting any "tree of the prescribed class." Now, unless the class has been prescribed, the cutting and felling of a tree does not amount to any offence and, therefore, there is no question of any penalty being levied. In case Rule 4 of the Rules stands repealed by the repealing clause, as submitted by Mr. Pratap Chand, then no rule or regulation made under the Act prescribing the class of the tree in respect of Section 404 has been shown to have been made. In other words, there is no prohibition of cutting and felling the trees. But that is not the case. Even the complaints allege contravention of these Rules. My attention has been drawn to Section 440 of the Act. The relevant clause of this section reads :

(a) any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye-law, regulation, form made, issued, imposed or granted under the Himachal Pradesh Municipal Act, 1968 (19 of 1968) or the Capital of Himachal Pradesh (Development and Regulation) Act, 1968 (22 of 1969) or any other law in force in any local area, constituted to be a city or included in a city, immediately before the appointed day shall, in so far as it is not inconsistent with the provision of this Act, continue in force until it is superseded by any appointment, delegation, notification, notice, tax, order, direction, scheme, licence, permission, registration, rule, bye-law or form made, issued, imposed or granted under this Act or any other law as aforesaid, as the case may be.

It is this clause which saves aforementioned Rule 4 which prescribes the class of trees.

10. This rule is not inconsistent with the provisions of this Act. On the other hand it is necessary in order to make Section 404 effective. Of course, if and when some provision is made prescribing the class of trees for the purpose of Section 404, then the aforementioned Rule 4 may be said to have ceased to be operative.

11. Mr. Pratap Chand has drawn my attention to a letter No. Fts (F) 9-6/74-SF from the Secretary (Fts) to the Government of Himachal Pradesh to the Administrator, Municipal Committee, Simla, and others. This letter is dated 5-3-1980. It reads:

I am directed to state that the Government of Himachal Pradesh have imposed a complete ban on the felling of trees within the limits of Simla Municipal Committee and Notified Area Committee, Manali with immediate effect." It may be noticed that this letter was issued while the Himachal Pradesh Municipal Act, 1968 was in force. The Himachal Pradesh Municipal Corporation Act, 1979 (Act No. 9 of 1980) received the assent of the President of India on 22-8-1980 and was published in the Himachal Pradesh Rajpatra on 18-10-1980. u/s 216-A, Himachal Pradesh Municipal Act, 1968, a permit could be obtained from the prescribed authority for felling a tree. Under the Himachal Pradesh Municipal (Prevention of Soil Erosion and Hill Side Safety) Rules, rules have been framed

prescribing the procedure for making and disposing of applications for permission to fell trees by the prescribed authority. The effect of the aforementioned letter was to inform the prescribed authority about the decision of the Government not to give any permission to cut trees. u/s 407 the Tree Authority is responsible, subject to any general or special order of the State Government not to give any permission to cut trees. u/s 407 the Tree Authority is responsible, subject to any general or special order of the State Government, for the preservation of all tree within its jurisdiction. Therefore, the direction of the State Government in this letter shall be applicable to the Tree Authority, In other words, in view of the complete ban on the felling of trees the Tree Authority has no right to grant any permission to fell any standing tree in the municipal area of Simla, But this letter does not, and cannot, override Section 404.

12. Another fact to be noticed is that there is no allegation that Shri K.C. Khanna was either seen cutting and felling the tree in question or was even present when these were cut. There is no evidence, nor even an allegation, that he abetted the felling of the said trees. For all that matters Shri Khanna may not have been in Simla when these were felled. Admittedly he was not present when the Forest Guard visited the "Ravensdale".

13. I am, therefore, satisfied that no case is made out for the prosecution of Shri K.C. Khanna. The notices issued to Shri K.C. Khanna in respect of the said two complaints are hereby quashed and set aside, and the complaints are dismissed.

14. Before parting with the case, I must take note of the allegations of Mr. D.K. Khanna that respondent Shri K.C. Khanna has been prosecuted mala fide. I find that there is substance in it. The facts show that on 15-3-1983 Forest Guard Prem Chand was accompanied by "B.O." as well as Forest Guard Pratap Singh. But strangely enough they were not cited as witnesses. I cannot imagine that a Forest Guard does not know the provisions of the above mentioned Rule 4 which have been in force since 1975. I understand that "B.O." is one of the Forest Officers of the Corporation and evidently he also did not know about the provisions of this Rule 4. If, indeed, both of them did not know about this provision, then they are really unfit to be given the duty of looking after the forests. If they in fact knew about this rule, then indeed they were performing their duties maliciously in order to harass an innocent person, and are not fit for being entrusted with the power. It is most unfortunate that a Tree Officer who, I am told is an Assistant Conservator of Forest, has also blindly sanctioned the prosecution and filed the complaint. Though I asked Mr. pratap Chand to inform me as to how many challans of such nature have been filed in Simla by these officers in the last one year or so in order to appreciate the working of and for assessing the bona fide of these officers, he has not been able to give me any facts. The Corporation must remember that prosecuting a citizen is a serious matter since it jeopardizes the liberty of a person especially u/s 416 of the Act where he can be sent to prison. I would expect the Commissioner of the Corporation to hold an inquiry into the matter and to take suitable action against

the delinquent officers to ensure that such things are not repeated in future.

15. I am also constrained to record that the Magistrate was very careless in summoning Shri K.C. Khanna as accused. The record shows that he summoned Shri Khanna in routine without applying his mind at all. It is the duty of a judicial officer to scrutinise every complaint and police challan before deciding to summon a person as an accused since it affects the liberty of a citizen. Issuing the summons to Shri K.C. Khanna u/s 33, Forest Act, while the complaint was under the Municipal Act was a big blunder. Even the Criminal Ahalmad of that court does not seem to know his duty as I find that the opening sheets of the cases show that the class of case is shown as "33 I. F. Act". I hope the Magistrate will be very careful in future in all criminal cases and will not give an occasion for such observations.