

(2013) 07 JH CK 0095

In the Jharkhand High Court

Case No : Criminal M.P. No. 2370 of 2012

Umang Kejriwal, Rama Shankar Singh @ R.S. Singh and
Chandra Prakash Pandey

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-07-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Forest Act, 1927 — Section 2, 29(3), 33

Citation : (2014) 4 EFLT 23

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Advocate : Indrajit Sinha, for the Appellant;

Final Decision : Allowed

Judgement

Rakesh Ranjan Prasad, J.—Since common issues are involved in these cases, they are taken up together "for hearing" and are being disposed of by a common order. By invoking inherent jurisdiction of this Court u/s 482 of the Cr.P.C., the petitioners have prayed for quashing of the entire criminal proceeding of B.F. Case No. 17 of 2012 and B.F. Case No. 18 of 2012, pending before the court of Judicial Magistrate, 1st class, Bokaro, including the order dated 3.9.2012, whereby and whereunder, cognizance of the offences punishable u/s 33 of the Indian Forest Act has been taken against these petitioners. The aforesaid cases were lodged separately on a common allegation that the petitioners-the Director and the employees of M/s. Electro Steel Integrated Limited (now M/s. Electro Steel Steels Limited), District-Bokaro, by encroaching over the land, falling within the forest area started constructing boundary wall and thereby they indulged themselves in non-forest activities without taking permission of the Central Government under the provision of Section 2 of the Conservation of Forest Act.

2. Earlier on the same allegation concerning plots No. 1120, 1159, 1321 and 1389, appertaining to Khata No. 58, Mauza/Thana No. 83 situated at Village

Bhagabandh, District of Bokaro several cases were lodged against number of employees including the Director of M/s. Electro Steel Integrated Limited. Upon which cognizance of the offences u/s 33 of the Act had been taken.

3. Those orders were challenged before this Court in Cr.M.P. No. 1653 of 2009, and analogous cases. This Court having taken notice of the facts that process of the notification as claimed to have been issued u/s 29(3) of the Indian Forest Act had never been completed and that the parties have been exercising their respective rights, titles and possession over the land on the basis of registered sale-deeds executed by the raiyats in whose favour a decree declaring right and title had been passed by the court of the competent jurisdiction, quashed the proceedings of all the cases including orders taking cognizance vide order dated 31.7.2010.

4. That order was challenged before the Hon''ble Supreme Court in SLP (Criminal) Nos. 9884 to 9887, which got dismissed. However, while dismissing, it was observed that the impugned order as well as the order of this Court shall not preclude the State from taking such appropriate action in the matter as may be available to it in law.

5. Learned counsel appearing for the petitioners submits that virtually on those two grounds, the entire criminal proceeding in the cases, referred to above, are being sought to be quashed, as the petitioners have derived right, title and interest over the land, in question by virtue of the sale-deeds executed by the raiyats in whose favour decree with respect to right, title and interest was passed by a court of competent jurisdiction and thereby the petitioners cannot be said to have committed any offence either under the Indian Forest Act or Conservation of Forest Act and as such the entire criminal proceedings are fit to be quashed.

6. The counter-affidavits have been filed, wherein, it has been pleaded that by virtue of issuance of notification in the year 1958 u/s 29(3) the land in question has been declared as protected forest and as such, any non-forest act by any one over the said land would fasten him with criminal liability under the Forest Act.

7. Having heard learned counsel appearing for the parties, and on perusal of the record including the order passed in Cr.M.P. No. 1653 of 2009, as well as analogous cases, it does appear that the court while dealing with the matter related with those cases did record that in a Title Suit preferred by the raiyats against the Department of Forest, it was held that the process of the notification as contemplated u/s 29(3) of the Indian Forest Act was never complete and thereby purported notification will never assume the characteristics of the notification as contemplated u/s 29(3) of the Indian Forest Act and as such, it will not extinguish the rights of the raiyats and therefore, any act/acts done by raiyats or successors in interest in exercise of their rights over the land which was never found to be the land of protected forest would never entail the person with criminal liability.

8. Similar was the dispute in case of Brajesh Kumar Ray and Another, Birendra Prasad Sinha and Others and Brajesh Kumar Ray and Others Vs. State of Jharkhand and Another, , where the petitioners were sought to be prosecuted by the Department of Forest when they in exercise of their rights have used the land claimed by the Department to be the forest land. While allowing those cases, it was observed by this Court which reads as follows:-

All these merely shows that the parties are at litigating terms and both of them are claiming their respective right, title and possession. The petitioners are claiming right, title on the basis of registered sale deed obtained from the raiyats, whereas, the State is claiming that it as a "protected forest" and thereby land of the State.

In the aforesaid circumstances, there being genuine disputes of right and title, I hold that the criminal proceedings are not warranted in law. In fact the State, including its Forest Department, should pursue the remedy in the suit/appeal, either pending before civil court, having competent jurisdiction, or before this Court.

9. Relying upon the said observation, this court also allowed the cases bearing Cr.M.P. No. 1653 of 2009, and analogous cases as facts were almost identical in all those cases.

10. Similar is the case of the petitioners in these two cases, where the petitioners in exercise of their rights derived from the raiyats did the alleged act. There appears to be serious disputes with respect to right, title and interest over the land, which has still not been settled as a title suit as has been informed on behalf of the petitioners is pending in between the parties where both the parties are claiming their right and title. Under these situations, continuance of criminal cases between the parties are unwarranted.

11. Under the circumstances, entire proceedings of B.F. Case No. 17 of 2012 and B.F. Case No. 18 of 2012, pending before the court of learned, Judicial Magistrate, 1st class, Bokaro, including the order under which cognizance of the offence u/s 33 of the Indian Forest has been taken in those cases against the petitioners are hereby set aside. In the result, these applications stand allowed.