

Neutral Citation No. - 2025:AHC:122508

Reserved on 14.07.2025

Delivered on 25.07.2025

Court No. - 77

Case :- APPLICATION U/S 482 No. - 24354 of 2024

Applicant :- Pankaj Mishra Alias Pankaj Kumar Mishra

Opposite Party :- State of U.P. and Others

Counsel for Applicant :- Abhishek Kumar Chaubey

Counsel for Opposite Party :- G.A.

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Abhishek Kumar Chaubey, learned counsel for applicant and learned AGA for opposite parties.

2. Present application has been preferred with prayer to quash the charge-sheet dated 08.06.2023 registered as Case Crime no. 59 of 2023 under Section 5, 26 Indian Forest Act, 1927 and 2 Forest (Conservation) Act, 1980, PS- Anpara, District Sonbhadra along with entire criminal proceedings and cognizance/summoning order dated 14.08.2023 in Case no. 2787 of 2023 (State vs. Pankaj Kumar Mishra and others) arising out of Case Crime no. 59 of 2023 under Section 5, 26 Indian Forest Act, 1927 and 2 Forest (Conservation) Act, 1980, PS- Anpara, District Sonbhadra and restrain the opposite parties not to adopt any coercive measure in pursuance of the aforesaid charge-sheet and cognizance/summoning order.

3. Learned counsel for applicant submitted that present FIR under Section 5, 26 of Indian Forest Act, 1927 and Section 2 of Forest (Conservation) Act 1980, bearing Case Crime no. 0059 of 2023, PS- Anpara, District Sonbhadra on dated 23.03.2023 against the applicant and another co-accused by opposite party no. 4/namely Prem Shankar Pandey, Forest Guard, Anpara Forest Range, Anpara with the allegation that while spot inspection carried out by opposite party no. 4 along with SDM, Duddhi, and SHO Anpara on 23.03.2023 of Fly Ash Brick Plant situated on Gata no. 15484Kha, village Kuldomari Tola Karaihya, it was found that non-forest work without obtaining consent from the concerned authorities was being carried out in contravention of Section 2 of Forest Conservation Act, 1980 and Section 5/26 of Indian Forest Act, 1927 as well as National Green Tribunal (NGT) order dated 07.09.2018. After conclusion of investigation, charge sheet has been submitted against the applicant

whereupon cognizance of offence has been taken up by learned court concerned vide order dated 14.08.2023 which has been challenged through instant application.

Arguments raised on behalf of Applicant

4. Learned counsel for applicant submitted that applicant had purchased the above mentioned land through sale deed dated 10.01.2006 from Ram Briksh S/o Moti, R/o village Kuldomri, Pargana Singrauli, Tehsil Duddhi, District Sonbhadra and in Sarvekshan Prapatra No. 14 and 15 (revised Khasra), Gata no. 15484Kha has been specifically recorded as agricultural land. It is further submitted that applicant had executed an agreement dated 10.02.2021 with Bharat Hume Pipes to run Fly Ash Brick unit subsequently partner of Bharat Hume Pipes Industries had established Fly Ash Brick Plant project after getting requisite NOC and completing all established procedures/formalities in accordance with settled provisions of law. As per categorization of Industrial Sector issued by Member Secretary, U.P. Pollution Control Board Fly, Ash Brick Plant falls within the white category and as the project is not running or established on the forest land neither it is surrounded by any forest land hence there is no need of NOC from forest department. Copy of Khatauni, sale deed, agreement dated 10.02.2021 and NOC is filed as Annexure nos. 2 to 4 of the application.

5. It is next submitted that applicant is social spirited person and activist of area raising various environmental degradation, land acquisition matters as well as other matters related to public at large and the administration with ulterior motive just to harass and create undue pressure upon him lodged instant FIR whereas real fact is that recently applicant has raised the issue of transportation of fly ash produced from Thermal Power Plants of District Sonbhadra which is not in accordance with provisions of law and has filed an Original Application bearing OA no. 862 of 2022 before the National Green Tribunal (NGT), New Delhi wherein after constitution of joint committee report has been sought which has not been submitted till today. The Fly Ash Brick Plant is being operated by Bharat Hume Pipe Company after getting all requisite formalities and NOCs from various department on bhumidhari land of applicant.

6. The Investigating Officer communicated on 20.04.2023 to Regional Forest Officer, Regional Office Anpara Range, Anpara enquiring about the status of land in question that whether these lands are forest land whereupon Regional Forest Officer, Regional Office, Anpara sent letter

dated 13.05.2023 giving reply from perusal of the same it becomes clear that on any land which has been notified under Section 4 of Indian Forest Act, 1927 where no final notification under Section 20 of Forest Act has been issued then for any mining/non-forestry work on the land which has been excluded by the Order of Forest Settlement Officer from the notification under Section 4 of Indian Forest Act, NOC/consent under provision of Forest Conservation Act, 1980 is mandatorily required. (Ref-Annexure no. 13 of the application).

7. Learned counsel highlighted Section 9 of Forest Conservation Rules, 2003 which is reproduced hereinbelow:

" 9. Proceedings against persons guilty of offences under the Act .-(1) The Central Government may, by notification, authorize any officer not below the rank of Conservator of Forests or the concerned forest officer having territorial jurisdiction over the forest land in respect of which the said offence is said to have been committed, to file complaints against the person(s) prima facie found guilty of offence under the Act or the violation of the rules made thereunder, in the Court having jurisdiction in the matter. Provided that no complaint shall be filed in the Court, without giving the person(s) or officer(s) or authority(s) against whom the allegations of offence exist, an opportunity to explain his or their conduct and to show cause, by issuing a notice in writing of not less than sixty days, as to why a complaint should not be filed in the Court against him or them for alleged offences.

(2) The officer authorised by the Central Government in sub-rule (1) may require any State Government or its officer or any person or any other authority to furnish to it within a specified period any reports, documents, statistics and any other information related to contravention of the Act or the rules made thereunder, considered necessary for making a complaint in any Court of jurisdiction and every such State Government or officer or person or authority shall be bound to do so."

And submitted that if any offence under Forest Conservation Act, 1980 is being attracted against the applicant or co-accused Shadab Ahmad then as per mandatory Rule 9 of Forest Conservation Rules, 2003 has to be adopted but no any offence under sections 5 and 26 of Indian Forest Act, 1927 will be attracted in the instant case.

8. Learned counsel for applicant also highlighted sections 5, 6, 7, 8, 9, 10, 11, 12, 14, 15 and 27 of the Indian Forest Act, 1927 and sections 2, 3 of Forest (Conservation) Act, 1980 and submitted that in instant case offence levelled against the applicant did not fulfil the ingredients of abovementioned sections. For substantiating his arguments learned counsel also relied upon judgement rendered by Hon'ble Apex Court in case of ***R.P.Kapur vs. State of Punjab*** reported in AIR 1960 SC 866, in case of ***State of Haryana & others vs. Ch. Bhajan Lal and others*** reported in AIR 1992 SC 604 and case of ***Madhavrao Jiwaji Rao Sindia***

and another vs. Shambhajirao Chandraji Rao Angre and others reported in AIR 1988 SC 709 where certain guidelines have been laid down where court may exercise its inherent power to quash the criminal proceeding.

Argument on behalf of Opposite Parties/State

9. Learned AGA vehemently opposed the prayer sought through instant application and submitted that Gram Kuldumari has been advertised under Section 20 of Forest Act and due to this reason Arazi No. 15484 Kha without obtaining permission from the Forest Department cannot be used as non-forest land and one Saddam after preparing the rent agreement from land owner Pankaj Kumar Mishra/applicant was using the same as non-forest and he has not taken permission due to this reason he cannot get benefit of the NOC obtained from Pollution Department and Industrial Department, hence no interference is required.

Observations and Conclusion

10. After hearing the rival submissions extended by learned counsel for the parties, it is crystal clear from the documents appended along with affidavit in respect of instant application that prosecution has come up with the case that the activity which has been carried out by the applicant in shape of Fly Ash Brick kiln although situated over the plot which has been purchased by the applicant and mandatory compliance has already been obtained from the period when the Fly Ash Brick Kiln has been started by erstwhile Company but at the same time, it is also not disputed that the plot is situated in village Kuldomari Tola Karaihya which is notified under Section 20 of Forest Act and as such whatever the activity will be carried out shall be strictly after taking due permission from concerned authority of the Forest Department and the same has not been obtained by the applicant, so far as regarding the demarcation of the plot is concerned which is alleged to be slightly encroaching over the forest land is also part of the same No Objection Certificate which ought to be obtained by the applicant from concerned authority of the Forest Department. In absence of mandatory compliances as per the regulation and defined under several judgment passed by Hon'ble Apex Court such as in case of *T.N. Godavarman Thirumulpad vs Union Of India & Ors* reported in *AIR 2012 SUPREME COURT 1254* wherein, it is settled that any activity carried out in the notified area of forest shall be dependent only upon obtaining No Objection Certificate from the Forest Department, failing which the authorities are having right to initiate criminal proceedings in relevant sections provided under the Forest Act

and the same has been initiated as apparent from the pleadings available in the record. The entire grounds taken up by learned counsel for the applicant for seeking quashing of the entire proceedings are amenable before the learned trial court and as such, at this stage, no interference is required by this Court especially in shape of providing any protection as prayed through the instant application.

11. In view of aforementioned facts and circumstances, there is hardly any merit available in the instant matter, hence application stands *dismissed* accordingly.

Order Date :- 25.7.2025

Shaswat

(Saurabh Srivastava,J.)