

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38158 of 2012

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1. Nagendra Kumar @ Nagendra Prasad
 2. S. Phani Varma
 3. Sidhnath Yadav @ Sidhnath Singh
 4. Arbind Kumar

.... Petitioner/s

Versus

1. The State of Bihar
2. The District Forest Officer, Jamui

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Hemant Kumar

For the Opposite Party/s : Mr. Renuka Ratnakar (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

06 13-07-2015

Inspite of notice, opposite party no.2, District Forest

Officer, Jamui has not put his appearance. State has filed counter-affidavit.

Petitioners, out of whom, petitioner nos.1, 3 and 4 are the Engineers under Irrigation Department of Government of Bihar while petitioner no.2 is a Contractor have prayed for quashing of order of cognizance dated 20.12.2011 in Complaint Case no.653 C² of 2011 whereunder they have been summoned to face trial for an offence punishable under section 33 of the Indian Forest Act on a complaint filed by opposite party no.2 disclosing therein that in order to construct Kundghat Dam over Bahuar River, some sort of work was taken up in a pre-existing canal on account thereof, caused damage to the plants, trees etc.

Heard learned counsel for the petitioners as well as learned Additional Public Prosecutor.

Gone through the complaint petition. From perusal of the complaint petition itself, it is apparent that Dam was being constructed by the State and during course thereof, petitioner nos.1, 3 and 4 were discharging their official duty and in likewise manner, petitioner no.2, a Contractor was acting in terms of agreement entered in between at his side as well as State. It is also apparent from Annexure-3 that before filing of complaint petition vide letter no.683 dated 15.06.2010, a sum of Rs.7,83,756/- in lieu of compensation against damage of plants/ trees on account of construction of Dam had already been paid to the Conservator of Forest vide Bank Draft no.380487 by the State.

So far application of 482 Cr.P.C. is concerned, it empowers the High Court to exercise its inherent powers to prevent abuse of process of Court and to quash proceeding instituted on complaint. However, such power could be exercised only in case where complaint does not disclose any offence or vexatious or oppressive.

In the facts and circumstance as stated above, instant prosecution appears to be misconceived, more particularly in the background of status of the petitioners. Virtually, either this case

has cropped up on account of fixing of muscle in between two departments or on account of communication gap from Conservator of Forest, who had already been handed over with the amount as compensation in lieu of damage of plants/ trees on account of construction of Dam that too, before filing of the complaint (Annexure-3/A). Furthermore, there happens to be absence of specific allegation. Moreover, being a public servant, and the alleged offence, from the complaint petition itself appears in due discharge of duty, hence attracts application of Section 197 Cr.P.C. also.

Accordingly, order dated 20.12.2011 passed by the learned Chief Judicial Magistrate, Jamui in Complaint Case no.653 C of 2011 is hereby quashed.

Consequent thereupon, petition is allowed.

(Aditya Kumar Trivedi, J)

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