

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision : 12.01.2015

1) C.R.M-M No.6127 of 2012(O&M)

Mr. Anil Ahuja

..... Petitioner

Versus

The State of Haryana and another

..... Respondents

2) C.R.M-M No.31135 of 2012(O&M)

Pawan Kumar

..... Petitioner

Versus

The State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present : Mr. Abhay Partap Singh, Advocate
for Mr. D.S. Rawat, Advocate &
Mr. R.K. Dhiman, Advocate
for the petitioner(s).

Mr. Anmol Malik, A.A.G., Haryana.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

These petitions have been filed under Section 482 Cr.P.C. for
quashing of Challan-cum-Complaint dated 22.10.2008 issued by the

respondent No.2 against the petitioners and the summons issued against the petitioner in complainant case No.360/2009 dated 02.06.2009 under Section 67 of the Indian Forest Act, 1927 and all subsequent proceedings arising therefrom. Both these petitions are decided by the common order since the issue involved is similar. For the sake of convenience the facts are being taken from CRM-M-6127-2012.

On 16.05.2012 the following order was passed in CRM-M-6127-2012:-

“In pursuant to agreement (Annexure P-3), the National Highways Authority of India gave a contract to the petitioner to make Six Laning Project from Gurgaon to Jaipur.

Counsel for the petitioner submits that as per sub-clause (b), (g) and (j) of clause 7.2, it was the understanding between the parties that the entire site is free from all sorts of actions and encumbrances as the NHAI has taken all the necessary actions.

The challan has been presented against the petitioner for cutting 1912 trees from prohibited forest area.

The stand of the counsel for the State is that no permission was taken by the petitioner before doing the same.

Counsel for the State seeks some time to file better affidavit stating that who was the competent authority to grant permission to the petitioner.

List again on 31.7.2012.

The trial Court is directed to adjourn the matter beyond the date given by this Court.

A copy of this order be given dasti to the counsel for the State under the signatures of the Court Secretary of this Court.”

On 12.02.2013 the following order was passed in CRM-M-6127-2012:-

“Learned AAG states that in response to a letter written by the Dy. Conservator of Forest, Forest Department, Govt. of Haryana, Forest Complex, Sohna Road, Gurgaon the National Highways Authority of India(NHAI) has replied that no specific permission was granted to start the work. Learned counsel for the petitioner on the other hand states that they had started the work after the agreement was executed on the representation of NHAI as per clause 10.4 of the Concession Agreement which is as follows:-

“10.4 Subject to the provisions of Clause 10.3, the site shall be made available by the Authority to the Concessionaire pursuant hereto free from all Encumbrances and occupations and without the al being required to make any payment to the Authority on account of any costs, compensation, expenses and charges for the acquisition and use of such site for the duration of the concession period, except insofar as otherwise expressly provided in this agreement. For the avoidance of doubt, it is agreed that existing rights of way, easements, privileges, liberties and appurtenances to the licensed premises shall not be deemed to be encumbrances.”

Learned counsel for the petitioner seeks a short adjournment to apprise the court as to when the site was handed over to them as per clause 10.3.

Adjourned to 07.03.2013.”

Learned counsel for the petitioners have further argued that no provision of the Indian Forest Act has been violated and the possession of the land in dispute has been handed over to them on 06.06.2008.

No reply has been filed by the State. Further the learned Assistant Advocate General has not been able to dispute the aforesaid facts.

There is no explanation as to why those officials of the National Highway

Authority of India (NHAI) who were primarily responsible for ensuring that the mandatory requirements are fulfilled were not even included in the list of accused persons. It is not not disputed that compensatory afforestation has already been undertaken by the concessionaire. There is also no dispute that the present petitioners are merely employees of the concessionaire and that subsequently permission was duly granted. No doubt there is an infraction of the letter of law but the petitioners have faced these proceedings now for almost seven years. The action of the respondents in not arraigning either the officials of the NHAI or the principals of the petitioners can also not be countenanced.

Consequently, these petitions are allowed and the above said Challan-cum-Complaint and the summons and all consequential proceedings arising therefrom are quashed qua petitioners.

Since the main case has been decided, the pending Criminal Misc. Application, if any, also stands disposed of.

January 12, 2015

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**(AJAY TEWARI)
JUDGE**