

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.12077 of 2013

Arising Out of PS.Case No. -19 Year- 2010 Thana -GOVERNMENT OFFICIAL COMP. District- -

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1. Naresh Kumar @ Ram Naresh Singh, S/O Late Dhaneshwar Yadav Resident Of Village- Tilathi, P.O.- Rajanpur, P.S.- Simri Bakhtiyarpur, District- Saharsa, Present Address- Junior Engineer (Rural Work Department), Work Division- Bihar Sharif, Branch- Harnaut, District- Nalanda.
 2. Amal Prakash, S/O Sri Asheshwar Yadav, resident Of Village- Bhikham Bhawan Bahadurpur Bagicha, P.O.- Rajendra Nagar, P.S.- Sultanganj, District- Patna, Present Address- Assistant Engineer (Rural Work Department), Work Sub-Division-Durgawati, Work Division- Mohania, Kaimur.

.... Petitioner/s

Versus

1. The State Of Bihar
2. Sri Lallan Lal, Forest (Policeman), Kalyanipur Sub-Division, P.S.- Chainpur, District- Kaimur At Bhabua.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar @ Manu-Advocate
Mr. Prawej Khan-Advocate
For the Opposite Party/s : Mr. A. Lal Pandit-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

Date: 22-11-2016

Both the petitioners namely Naresh Kumar @ Ram Naresh Singh and Amal Prakash, being government employees, have challenged the order dated 10.06.2011 passed by the Chief Judicial Magistrate, Kaimur at Bhabua in connection with Forest Case No.19 of 2010 whereby and whereunder they have been along with others directed to face trial for an offence punishable under Sections 33, 63(c) of the Forest Act as well as Section 2 of Forest Conservation Act.

2. A preliminary report was submitted at the end of one



Lalan Lal, Forest Guard against Amar Bind, Kunwar Bind along with 25-30 unknown persons on the ground that the accused persons illegally indulged in construction of *Bundh* by removing the pillar as well as destroying the plants/ tree by means of fire. On alarm raised by Forester, all the labourer escaped therefrom and during course thereof, accused, so named, were identified. It has further been disclosed that on preliminary inquiry, he came to know that *Bandh* was being constructed from M.L.A. Fund over the land of Forest under the supervision of R.E.O. Department.

3. Subsequently thereof, prosecution report was filed after conducting enquiry whereupon Chief Judicial Magistrate, Kaimur at Bhabua took cognizance in a manner as indicated above whereupon instant petition has been filed challenging the same.

4. It has been submitted on behalf of petitioners that present prosecution has been launched in despotic manner as a result of which so many infirmities persisting in the prosecution case whereupon it could be inferred that petitioners have intentionally, purposely, malafidely been dragged in the present proceeding.

5. It has also been submitted that from parallel scrutiny of the preliminary report as well as prosecution report, it is evident that the *Bundh* so alleged was being constructed at the end of the government itself on account thereof, there should have been proper identification of the officials concerned right from the stage of



authority, who issued such order, and furthermore, the prosecuting agency should have enquired during course of enquiry, where planned was duly acknowledged or not and in likewise manner, whether the act as alleged was being executed by the petitioners. Controverting the order, if any, encroaching the land of the forest.

6. Furthermore, it has been submitted that from the nature of allegation, it appears that petitioners were discharging their duty and so, cognizance would not have been taken for want of sanction under Section 197 of the Cr.P.C.

7. It has also been submitted that the complainant purposely withheld the information regarding institution of police case at their end bearing Chainpur P. S. Case No.61 of 2010 dated 20.05.2010 wherein final report was submitted after concluding the investigation and the same had already been accepted (Annexures-3 and 4). In the aforesaid background, it has been submitted that as police case was pending on the date of filing of preliminary report against the same set of accused on account thereof, the learned lower Court should have proceeded in terms of Section 210 of the Cr.P.C., which never been exercised and so, the whole procedure adopted by the learned lower Court happens to be in contravention of law.

8. Furthermore, it has also been submitted that neither Khata Number nor Plot Number nay proper identification of the reserve forest has been disclosed in the prosecution report.

Consequent thereupon, the prosecution suffers from vagueness and the cumulative effect of the deficiencies as submitted above nullify the order impugned.

9. The learned Additional Public Prosecutor along with learned counsel representing the Forest Department opposed the prayer and submitted that order of cognizance in ordinary course of nature did not require interference and so, instant petition be rejected. Furthermore, it has also been submitted that whatever grounds have been raised at the end of the petitioners would be available to them during course of trial.

10. From the prosecution report, it is apparent that *Bandh* was being constructed from M.L.A. Fund and so, it was being executed by the government itself through its officials. That being so, the government employees were performing their duty. In case, there happens to be nexus in between the offence so alleged with the due discharge of the duty by a public servant, then in that event, sanction is must. For better appreciation, Section 197 of the Cr.P.C. is quoted below:-

197. Prosecution of Judges and public servants.

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused

of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction-

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government: ¹ Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression "State Government" occurring therein, the expression "Central Government" were substituted.

(2) No Court shall take cognizance of any offence alleged to have been committed by

any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) *The State Government may, by notification, direct that the provisions of sub- section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub- section will apply as if for the expression" Central Government" occurring therein, the expression" State Government" were substituted.*

(3A) ¹ *Notwithstanding anything contained in sub- section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of*

the Central Government.

(3B) *Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 , receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]*

(4) *The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court*

before which the trial is to be held.

11. Because of the fact that sanction has not been obtained at the end of the complainant/ respondent, which happens to be condition precedent for taking cognizance thereupon, as such, the order impugned relating to these two petitioners is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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