

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10979 of 2012

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GOPAL SINGH S/O LATE SAHDEO SINGH RESIDENT OF VILLAGE-
MOHANPUR, P.S.- DHARAHRA, DISTRICT- MUNGER

... .. 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. Rajkumar RajeshRAJKUMAR RAJESH
For the Opposite Party/s : Mr. INDU KUMARI SRIVASTAVA (A)

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CORAM: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

Date : 19-12-2017

Heard learned counsels for the parties.

Petitioner, by means of this application under section 482 of the Code of Criminal Procedure, have invoked the inherent jurisdiction of this Court with prayer to quash the order dated 10.03.2006 passed by the Chief Judicial Magistrate, Jamui in Case No. 112 C2 of 2006, whereby and whereunder cognizance has been taken against the petitioner for the offence under sections 26, 41, 42 of the Indian Forest Act.

Learned counsel appearing for the petitioner submits that no offence against these petitioners is disclosed and the present prosecution has been initiated with mala fide intention for the purposes of harassment. It is further submitted that the alleged date of construction in the forest area is



09.08.2005 whereas this petitioner was already transferred and relieved from Rural Engineering Organization, Jamui vide memo no. 481 dated 29.07.2005, and as such, there is no question of his involvement and the allegations levelled are highly unbelievable, impossible, improper and far from truth. Learned counsel further submits that in terms of Rule 9 of The Forest (Conservation) Rules, 2003, no complaint shall be filed in Court against any one under the said Act (Indian Forest Act) without giving a notice in writing of not less than sixty days to give an opportunity to explain or show cause of his conduct against whom there is allegation of offence, which has not been followed in the present case. Learned counsel further submits that from the face of the allegations levelled in the first information report, no case under sections 26, 41 and 42 of the Indian Forest Act is made out against this petitioner.

Considering the materials available on record and the facts & circumstances of the case, this Court finds that the submissions advanced by the learned counsel for the petitioner has force. Section 9 of the Forest (Conservation) Rules, 2003 provides as under ;

“Proceedings against persons guilty of offences under the Act – (1) The Central Government may, by notification, authorise 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 (ies) 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 authorized 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.”

From perusal of the aforesaid provisions of law and the facts and circumstances of the present case, it appears that



the aforesaid requirement of law has not at all been followed in the present case.

Moreover, the opposite party no. 2, the District Forest Officer, Jamui, who has been validly served notice of this petition, has not appeared before this Court to rebut the submissions made on behalf of the petitioner.

In view of the discussions made above, this Court finds that the order dated 10.03.2006 passed by the Chief Judicial Magistrate, Jamui in Case No. 112 C2 of 2006, whereby and whereunder cognizance has been taken against the petitioner for the offence under sections 26, 41, 42 of the Indian Forest Act, is not tenable in the eye of law. The same is, hereby, quashed.

The application, accordingly, stands allowed.

(Arvind Srivastava, J)

mcv/-

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