

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34661 of 2011

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Makeshwar Paswan @ Muneshwar Paswan, S/O Late Shyam Lal Paswan, R/O
Village - Bela, P.O. Uphara, P.S. Uphara, District - Aurangabad

.... Petitioner

Versus

- 1. The State of Bihar
- 2. The Forest Ranger Officer, Forest Range, Barachatti, Forest Division, Gaya

.... Opposite Parties

with

Criminal Miscellaneous No. 34663 of 2011

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Ganesh Thakur, S/O Late Ram Eakbal Thakur, R/O Village - Kamtaul, P.O.
Kamtal, P.S. Kamtaul, District - Darbhanga

.... Petitioner

Versus

- 1. The State of Bihar
- 2. The Forest Ranger Officer, Forest Range Bararachatti Forest Division Gaya

.... Opposite Parties

with

Criminal Miscellaneous No. 34664 of 2011

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Dilip Kumar Sinha, son of Late Madan Mohan Prasad, resident of Village- Simo
Aara, P.O. Simo Aara, Dist- Gaya.

.... Petitioner

Versus

- 1. The State of Bihar
- 2. The Forest Ranger Officer, Forest Range, Barachatti, Forest Division, Gaya.

.... Opposite Parties

Appearance:

(In Cr.Misc. No.34661 of 2011)

For the Petitioner : Mr. Ramesh Kumar Chaudhary, Adv.

For the Opposite Parties : APP

(In Cr.Misc. No.34663 of 2011)

For the Petitioner : Mr. Ramesh Kumar Chaudhary, Adv.

For the Opposite Parties : APP



(In Cr.Misc. No.34664 of 2011)

For the Petitioner : Mr. Ramesh Kumar Chaudhary, Adv.

For the Opposite Parties : APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 25-04-2017

Heard learned counsel for the petitioners and learned APP
for the State.

2. These petitions have been filed for quashing the
common order dated 24.11.2008 passed by the Sub-Divisional Judicial
Magistrate, Sherghati, Gaya taking cognizance against the petitioners
along with some other persons in Trial No. 2147 of 2008/1567 of 2010
for the offences under Section 29(3) of the Indian Forest Act.

3. The prosecution case in short is that the complainant, a
Ranger Forest Officer Barachatti, Gaya Forest Division, alleged that
some part of the forest land had been encroached at Government level
by constructing Block Office, Circle Office and Police Station. Towards
South from Circle Office, a building of the Primary Health Centre was
also constructed by cutting forest trees with the help of the petitioners
thereby violating Sections 2 and 3 of the Forest Act.

4. Learned counsel for the petitioners submits that the
criminal prosecution of the petitioners is completely misconceived and
unsustainable. At the very outset itself, it is submitted that criminal
prosecution of the petitioners is bad in law for want of proper sanction
in terms of Section 197 of Criminal Procedure Code. The petitioners
Makeshwar Paswan @ Muneshwar Paswan, Ganesh Thakur and Dilip



Kumar Sinha were the Circle Inspector, Circle Officer and Halka Karamchari respectively and Government employees as such on the alleged date of occurrence.

5. Learned APP appearing on behalf of the opposite parties appears and has been heard. He is however not able to point out that appropriate sanction had been obtained for purposes of criminal prosecution of the petitioners.

6. Having heard learned counsel for the parties and on consideration of the material on record, this Court finds merit in the petition. Section 197(1) Criminal Procedure Code reads as follows:

“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:

[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.]”

7. In absence of any material on record pointed out by the Opposite Parties to show that proper sanction had been obtained for the purpose of prosecution of the petitioners, this Court is of the view that such prosecution cannot be sustained and continuance thereof would amount to abuse of process of the Court. Learned counsel for the petitioners has raised other grounds in support of the petitions which are however not required to be dealt with. The common impugned order dated 24.11.2008 passed by Sub-Divisional Judicial Magistrate, Sherghati taking cognizance in Trial No. 2147 of 2008/1567 of 2010 against the petitioners is accordingly hereby quashed and all the three petitions stand allowed.

9. Registry is directed to send back the lower court records without any delay.

(Vikash Jain, J)

Md. Ibrarul/BT

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	28.04.2017
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