

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.17355 of 2011

Arising Out of Complaint Case No. -99C2 Year- 2005 Thana District- JAMUI

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Gopal Singh, S/o Late Sahdev Singh, R/o Vill-Mohanpur, P.S.-Dharahra,
Distt-Munger

.... Petitioner

Versus

1. The State of Bihar
2. Union of India through Conservator of Forest Jhanjha, District-Jamui
3. Pramod Ranjan Sahay, Forest Conservator, Jha-Jha, Parisar, District-Jamui

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Raj Kumar Rajesh, Advocate

Mr. Girish Chandra, Advocate

For the State : Mr. Brajendra Nath Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-11-2017

Heard learned counsel for the petitioner and learned
counsel for the complainant-opposite party no.3.

2. This application under Section 482 of the Code of
Criminal Procedure (for short 'Cr.P.C.') has been filed for quashing
the order dated 18.03.2011 passed by the learned Judicial
Magistrate-1st Class, Jamui in connection with Complaint Case
No.99C2 of 2005 by which the application filed by the petitioner for
discharge from the complaint case under Section 245 of the Cr. P.C.



has been rejected.

3. It would be manifest from the record that the allegation made in the complaint is that the petitioner who was Junior Engineer at the relevant time in R.E.O., Jamui was executing the work of construction of road on the land of Mahapur reserve forest by pitching the stone and boulder brought from the reserved forest. The said construction of road was in violation of Forest (Conservation) Act, 1980 until obtainment of prior permission from the Government of India.

4. The learned Magistrate took cognizance of the offence under Sections 26, 41 and 42 of the Indian Forest Act, 1989 and at the stage of framing of charge, an application was filed under Section 245 of the Cr.P.C. seeking discharge. The said application has been dismissed by the learned Judicial Magistrate-1st Class, Jamui vide order dated 18.03.2011 holding therein that there are sufficient materials to proceed against the petitioner.

5. Learned counsel for the petitioner submitted that the entire complaint is malicious in nature. The petitioner being a government servant was discharging duty in official capacity and no criminality can be attached to any of the deeds alleged in the complaint. He submitted that even if the construction work was going on, on reserved forest land, the prosecution of the petitioner in



absence of sanction from the competent authority is bad in law. He also submitted that prior to the institution of the complaint, the petitioner was transferred to a different place and, thus, he could not have been prosecuted in the complaint.

6. *Per contra*, learned counsel appearing for the complainant-opposite party no.3 submitted that the District Magistrate, Jamui had given the administrative approval of the construction of road from Bhadwania village to Narganjo main road with other schemes and under *Kam ke Badle anaj karyakaram yojna*. The implementing agency R.E.O. Jaumui was bound to survey the working area and to be sure that the working area is free from all encumbrances and fit for implementation to work. He submitted that the part of the working area falls under khesra no.190, mauza-Mahapur, P.S.-Chakai and P.S. No.3 of 70. That area is notified as Reserve Forest vide Notification No.6011 dated 23rd June, 1947 and properly demarcated at site also. He submitted that in fact there is clear violation of the provisions of the Indian Forest Act, 1927 and the defence taken by the petitioner that he was not Incharge of execution of the work can be tested by the court only during trial and not for the purpose of quashing the complaint case.

7. I have heard learned counsel for the parties and perused the record.



8. As per the complaint it is alleged that not only the construction of road in the reserved forest was started and executed by the petitioner but the stone, boulders used in road construction was also brought from the reserve forest, which prima facie makes out an offence under the Forest Act.

9. In that view of the matter, if the court below has found sufficient material to proceed with the trial of the case, no illegality can be found with the impugned order dated 18.03.2011 passed by the learned Judicial Magistrate-1st Class, Jamui.

10. The application being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.11.2017
Transmission Date	09.11.2017

