

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.24841 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- GAYA

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Ganesh Thakur, S/O Late Ram Eakbal Thakur, Resident of Village+P.O.+P.S.-
Kamtaul, District- Darbhanga.

.... Petitioner/s

Versus

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

.... Opposite Party/s

with

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Criminal Miscellaneous No. 33429 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- GAYA

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Dilip Kumar Sinha, S/O Late Madan Mohan Prasad, R/O Village - Simoaara, P.O.
Simoaara, District – Gaya.

.... Petitioner/s

Versus

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

.... Opposite Party/s

with

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Criminal Miscellaneous No. 33430 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- GAYA

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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/s

Versus

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

.... Opposite Party/s

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Appearance :

(In Cr.Misc. Nos.24841 of 2011, 33429 of 2011 and 33430 of 2011)

For the Petitioner/s : Mr. Ramesh Kumar Chaudhary, Advocate.

For the State : Mr. A.M.P. Mehta, A.P.P.

Mr. A.Dayal, A.P.P.



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CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT

Date: 12-10-2017

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

2. These three applications, under Section 482 of the Code of Criminal Procedure, are directed against the order dated 25.11.2008 passed in Forest Case No. 14 of 2006/Trial No. 1507 of 2011, whereby the Sub-Divisional Judicial Magistrate, Sherghati, Gaya, summoned the accused-petitioners, under Section 204 of Cr.P.C finding the prima facie case, under Sections 33 and 63 of the Indian Forest Act. Therefore, these three applications are being heard together and are being disposed of by common order.

3. The brief facts leading to these applications are that opposite party no. 2 being Forest Ranger, Barachatti, Gaya, submitted a prosecution report through letter no. 321 dated 25.08.2006 before the Sub-Divisional Judicial Magistrate, Sherghati, Gaya, to the effect that 109.37 acres of land of Thana No. 370 of Village-Mohanpur is declared as reserved forest in the year 1953. Few portion of said land was earlier encroached by constructing building of Block Office, Circle Office and Police Station at the Government level. Again over some portion of aforesaid land is being encroached by constructing the B.R.C. building under Bihar Education Project under the



supervision of Ganesh Thakur Circle officer, Muneshwar Paswan Circle Inspector, Dilip Kumar Sinha Halka Karamchari of Circle Mohanpur and Ram Briksh Prasad Head Master of Mohanpur Middle School and others. The, complainant-opposite party no. 2 along with two forest guards, namely, Titu Mandal and Hari Prasad Mandal along with other forest officials went at the place of construction and tried to stop the construction work and several letters were also sent to the higher officials in spite of that construction work was being done. Thereafter, complainant-opposite party no. 2 visited on spot along with other officials on 24.08.2006 at that time the work was not being done due to rain but on inspection it was found that the resent work was done. As such, accused have committed the offence under Sections 33 and 63 of the Indian Forest Act in contravention of under Sections 2 and 3 of the Forest Protection Act, 1927.

After filing the prosecution report by the opposite party no. 2, the court of Sub-Divisional Judicial Magistrate, Sherghati, Gaya, summoned the accused-petitioners under Section 204 Cr.P.C., through the impugned order dated 25.11.2008 finding prima facie case under Sections 33 and 63 of the Indian Forest Act.

4. Learned counsel for the petitioners, Ganesh Thakur, Dilip Kumar Sinha and Makeswar Paswan, who are Circle Officer, Circle Inspector and Halka Karamchari, Sherghati Block, Gaya,



submits that on receiving the direction of the higher authority for constructing the school building under Bihar Education Project, 150 X 150 feet land of plot nos. 464 and 872 area 10.42 acres of Khata No. 59 situated in Village –Mohanpur was identified on inspection by the petitioner, Dilip Kumar Sinha, Halka Karamchari and report was prepared in that regard by the petitioner Muneshwar Paswan, Circle Inspector and the petitioner being the Circle Officer sent the report to Block Education Extension Officer, Mohanpur, Gaya on 23.07.2005, which would appear from annexure 4 to the Criminal Misc. No. 33429 of 2011. The said land is recorded in Khatian in the name of State of Bihar, which would appear from Khatian of village Mohanpur, annexure 5 to the Criminal Misc. No. 33429 of 2011. After making complaint by the Forest Department to higher officer of Revenue Department, the Secretary Environment and Forest Department, Government of Bihar sent the letter on 08.05.2012 to the Forest Divisional Officer, Sherghati, Gaya in reference to letter no. 469 dated 31.01.2012 to the effect that the report submitted by the Circle Officer, Mohanpur is based on the basis of entry as detailed in the Khatian and there is no lapses of revenue officials which would appear from Annexure 1 to the supplementary affidavit of Criminal Misc. No. 33429 of 2011. As such, impugned order summoning the accused-petitioners is illegal.



5. On perusal of the record, it appears that in the prosecution report it is alleged that petitioners being the Circle Officer, Circle Inspector and Halka Karmchari of Circle Sherghati identified the some portion of land of Thana No. 370 area 109.37 acres in the village Mohanpur for construction of school building under Bihar Education Project which is notified as reserved forest in the year 1953. Annexure 4 of Criminal Misc. No. 33429 of 2011 shows that the petitioner Ganesh Thakur being the Circle Officer Sherghati on the basis of inspection report of petitioner Bhuneshwar Paswan being the Circle Inspector and petitioner Dilip Kumar Sinha being the Halka Karamchari sent the report through letter dated 22.07.2005 to Block Education Extension Officer, Mohanpur for construction of school building under Bihar Education Project over the land 150 X 150 feet of Khesara Nos. 464 and 872 of area 10.42 acres of Khata No. 59 Thana No. 370 of village Mohanpur. The said plots are recorded in the name of State of Bihar as appears to Annexure 5 of Khatian of Village Mohanpur. The Secretary, Forest and Environment Department, Government of Bihar through letter dated 05.08.2012 informed to the Divisional Forest Office, Forest Division Gaya in reply to Letter No. 469 dated 31.01.2012 that the land as proposed for construction of school building is recorded in Khatian in the name of State of Bihar. As such, the impugned order



summoning the petitioners for the offence under Sections 33 and 63 of the Forest Act, who are Circle Officer, Circle Inspector and Halka Karmachari, appears to be illegal and amounts to abuse of the process of the court.

6. In the result, the order dated 25.11.2008 passed in Forest Case No. 14 of 2006/Trial No.1507 of 2011, summoning the accused-petitioners for the offence under Sections 33 and 63 of the Forest Act and entire criminal proceedings is hereby quashed and these applications are allowed.

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.10.2017
Transmission Date	17.10.2017

