

SMT. JUSTICE T.RAJANI

Criminal Petition No.12178 of 2011

ORDER:

This petition is filed by the petitioner seeking to quash the prosecution in C.C. No.85 of 2011 on the file of the Chief Metropolitan Magistrate, Visakhapatnam. The offences alleged are under Sections 27, 29 and 32 of Wildlife (Protection) Act, 1972 (for short "the Act") of Sub-Divisional Forest Officer, Visakhapatnam.

Heard the learned counsel for the petitioner and the learned Public Prosecutor for the respondent and perused the material placed on record.

The case of the prosecution, as per the charge sheet, is that on 10.01.2011 accused No.1 submitted a requisition before the LW.6 stating that they would erect temporary setting from 10.01.2011 to 03.02.2011 in the island of Chamurugedda Reservoir and would shoot a film acted by N.Balakrishna as hero and Lakshmi Roy, as heroine from 04.02.2011 to 28.02.2011 and would dismantle the setting from 01.03.2011 to 10.03.2011. Based on the recommendations submitted by the Forest Range Officers, Visakhapatnam, L.W.16 issued order vide proceedings dated 13.01.2011 to accused No.1 with a condition not to disturb any flora and fauna etc., during the above period, and if any irregularities are found, action will be initiated as per the provisions of the Act. Pursuant to the above orders, accused No.1, being the Production Manager, started construction of temporary structures like water pond, steps, artificial settings etc., by using Plaster of Paris, Fiber, Hygienic chemicals, red oxide, synthetic paints etc., and also digging of gravel in the sanctuary, by spreading 10 mm HGB metal on the ground. The accused has violated the Act by using the above injurious substances and has also thrown away the prohibited materials like plastic goods such as carry bags, tea cups, water glass etc. The accused further unauthorisedly has drawn

water from Chumurgedda Reservoir by using small electoral motor without any permission or knowledge of L.W.16 for the purpose of clearing utensils and other substances and thus the reservoir became contaminated. On a report lodged by L.W.8, L.W.9 got enquired and inspected the scene personally and observed violations committed by the accused and reported the matter to L.W.10. L.W.10 issued cancellation orders, with a direction to vacate the premises immediately without going further in shooting of the further film. Based on the orders of L.W.10, present case was registered for the offence under Sections 27, 29 and 32 of the Act.

The learned counsel for the petitioner submits, that immediately after the cancellation of the orders, the petitioner approached this Court by way of a writ petition and by virtue of the orders passed in W.P. No.2597 of 2011, this Court observed as follows:

“In my *prima facie* opinion, though no specific permission for raising settings was granted by respondent No.1, as permission was granted with reference to the petitioner’s application, which categorically mentioned the activities that were proposed to be taken up over the land in question, it is implied that respondent No.1 has given such a permission, lest no shooting could be visualized without the settings proposed by the petitioner.”

The above order was an interim order made by this Court suspending the order of cancellation passed by the respondent No.1 and imposed two conditions that “*The petitioner shall not damage any flora and fauna in the course of shooting, and The petitioner shall remove all the settings that were erected immediately after the shooting and restore the lake and the remaining part of the place, which is used for shooting, to its original position.*” By virtue of the orders in the said writ petition, this Court passed an order in favour of the petitioner. Observation made in the order dated 25.02.2011 passed in W.P. No.4536 of 2011 is

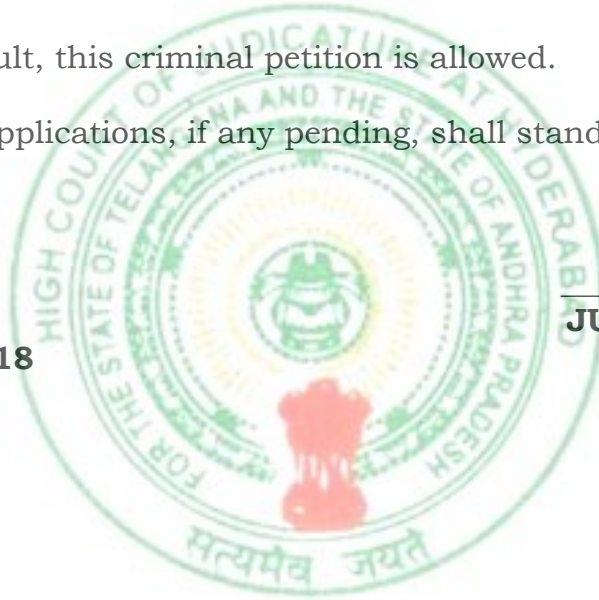
relevant for deciding this petition. A perusal of the said order shows that respondent No.2 therein has cancelled the permission granted by the respondent No.1. In his order, respondent No.2 has mentioned violation of several conditions allegedly indulged in by the petitioner, which are not contained in the order of respondent No.1 while granting permission. The Court came to *prima facie* opinion that film shooting involves many activities, which may inevitably interfere with the ecology and environment. It was observed that regrettably, respondent No.1 while granting permission did not appear to have visualized the potential risks involved in granting permission for a film shooting, having granted such permission, the respondents cannot be permitted to act at their whims on the purported interference with ecology and environment in the course of film shooting, which, if permitted, may lead to huge financial loss to the petitioner. While directing respondent No.2 to file his affidavit, indicating therein the action he has initiated against respondent No.1 for granting the permission in the first place, the Court permitted the petitioners to resume the shooting and complete it in two days.

The learned counsel for the petitioner submits that it is only the activities that were required for continuing of shooting in the said area, that they have taken up, like cooking food and cleaning utensils and cleaning up their makeup, which might have contained some chemicals. The learned counsel also submits that in view of the animosity that prevailed against the shooting of films pertaining to a particular actor, this complaint came to be filed and there is no specific allegation in the complaint which would constitute an offence under the above provisions of the Act. This Court finds some force in the said contentions. The complaint does not specify as to what chemicals were mixed in the water. Absolutely there would not be any reason for the petitioners to mix water with chemicals and the permission sought was only to

continue their shooting, which may involve usage of makeup provisions, which may contain chemicals. Their acts cannot be termed as made with an intention to pollute reservoir and thereby affect the flora and fauna. This Court in W.P. No.4531 of 2011 observed that respondent No.1 given permission knowing that the activities mentioned in the application of the petitioner would be carried on. He was also aware that the troupe would be staying there for the purpose of shooting and would have to carry on the objected activities, necessarily. Hence, in view of the above, this Court opines that the complaint is filed with baseless allegations and hence, continuation of proceedings against the petitioner would result of abuse of process of law.

In the result, this criminal petition is allowed. As a sequel, miscellaneous applications, if any pending, shall stand closed.

Date: 22.10.2018
LSK



JUSTICE T. RAJANI