

HIGH COURT OF CHHATTISGARH, BILASPURCrMP No.571 of 2014

State of Chhattisgarh, Through the Forest Range Officer, Forest Range,
North Bortalav, District-Rajnandgaon (CG)

--- Petitioner

Versus

1. Ishan Yadav S/o. Durga Prasad Yadav Aged about 25 years, Caste Yadav, R/o. Village Thethwar Para, Dongargarh, P.S. Dongargarh, District Rajnandgaon (CG)
2. Ramdas S/o. Kejuram Sahu, Aged about 30 years, Caste Sahu R/o. Village Chouthana, P.S. Dongargarh, District-Rajnandgaon (CG)
3. Rohit S/o. Harichandra Padoti, Aged about 32 years, Caste Gond, R/o. Village Chouthana, P.S. Dongargarh, District-Rajnandgaon (CG)
4. Deepak S/o. Shivcharan Nishad, Aged about 35 years, R/o. Village Diprapara, P.S. Dongargarh, District-Rajnandgaon (CG)
5. Harishankar S/o Tirith Patel, Aged about 32 years, Caste Marar, R/o. Thana Chowk, Dongargarh, P.S. Dongargarh, District Rajnandgaon (CG)
6. Mithun Yadav S/o. Milan Yadav, Aged 32 years, Caste Yadav, R/o. Village Thethwar Para, Dongargarh, District Rajnandgaon (CG)

--- Respondents

For Petitioner	:Mr.Ghanshyam Patel, Government Advocate
For Respondents	:Mr.Akash Pandey, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal
Order on Board

21/06/2019

1. The Forest Range Officer, Range Uttar Bortalab, Forest Division Khairagarh, District Rajnandgaon on 15.2.2014 registered the forest offence under POR No.16/2009 for offence punishable under Section 26 (1) (f) of the Indian Forest Act, 1927 (hereinafter called as "the Act of 1927") against the respondents herein and also simultaneously investigated the matter under Section 3 of the Prevention of Damage to Public Property Act, 1984 (hereinafter called as "the Act of 1984") and on 19.2.2014 sought permission from the Judicial Magistrate First Class, Dongargarh to file charge-sheet for offences punishable under Section 3

of the Act of 1984 against the respondents herein. Learned Judicial Magistrate First Class by order dated 19.2.2014 dismissed the application holding that offences under Section 3 of the Act of 1984 are cognizable offences and it has to be investigated by the police officer under the Code of Criminal Procedure, as such, permission cannot be granted to file charge-sheet for offence punishable under Section 3 of the Act of 1984. The petitioner/State assailed that order before the Court of Additional Sessions Judge, Link Court, Dongargarh and that Court by the impugned order concurred with the view expressed by learned JMFC and dismissed the revision. Feeling aggrieved against the order passed by two Courts below, this petition under Section 482 of the CrPC has been filed by the State/petitioner.

2. Mr.Ghanshyam Patel, learned Government Advocate for the petitioner/State, would submit that both the Courts below are absolutely unjustified in not granting the application to the Forest Range Officer, Department of Forest to file charge-sheet for cognizable offence punishable under Section 3 of the Act of 1984 against the respondents herein and thereby committed the illegality, which deserve to be set aside.
3. On the other hand, Mr.Akash Pandey, learned counsel for the respondents, would support the impugned order and submit that the orders passed by two Courts below are strictly in accordance with law.
4. I have heard learned counsel for the parties, considered their rival submissions made hereinabove and also went through the records with utmost circumspection.
5. The Act of 1984 is to provide for prevention of damage to public property

and for matters connected therewith. Section 3 of the Act of 1984 provides that whoever commits mischief by doing any act in respect of any public property, other than public property of the nature referred to in sub-section (2), shall be punished with imprisonment for a term which may extend to five years and with fine.

6. Part-II of first schedule in which classification of offences against other laws has been provided and according to which, if the offences are punishable with imprisonment for 3 years and upwards, but not more than 7 years, offences would be cognizable offences.

7. Section 2(h) of the CrPC provides as under:-

““investigation” includes all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person who is authorised by a Magistrate in this behalf.”

A careful perusal of the aforesaid provision show that the investigation is to be conducted by a police officer in case the Magistrate himself does not permit it by authorising a person in this behalf.

8. At this stage, it would be appropriate to notice the provisions contained in Sections 4 and 5 of the CrPC which state as under:-

“4. Trial of offences under the Indian Penal Code and other laws.-(1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

5. Saving.-Nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for the time being in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force.”

9. A conjoint effect of Section 4(2) read with Section 5 of the CrPC is that all offences, whether under the IPC or under any other law, have to be investigated, inquired into, tried and otherwise dealt with according to the provisions of the CrPC, unless there be an enactment regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences, in which case an enactment will prevail over those of CrPC. The jurisdiction, under Section 4 of the CrPC, is comprehensive and to the extent that till no valid machinery is set up under any Act for investigation or trial, the jurisdiction of the officers and setup, provided under the CrPC, cannot be said to have been excluded.
10. Section 5 of the CrPC says that ordinarily, the CrPC will not affect (i) any special law (see S. 41, Penal Code); (ii) any local law (see S. 42, Penal Code); (iii) any special jurisdiction or power, and (iv) any special form of procedure.
11. The Supreme Court in the matter of V.C.Chinnappa Goudar v. Karnataka State Pollution Control Board and another¹ has held as under:-
- “8. In this context, when we refer to Section 5 CrPC, the said section makes it clear that in the absence of specific provisions to the contrary, nothing contained in the Criminal Procedure Code would affect any special or local laws providing for any special form or procedure prescribed to be made applicable.....”
12. It is quite vivid that there is no provision in the CrPC to the contrary regarding investigation and filing of charge-sheet authorising a Forrest Officer to investigate the offence under the Act of 1984. Therefore, the offence committed and covered under the Act of 1984 are to be

1 (2015) 14 SCC 535

investigated strictly by police officer in accordance with the provisions of the CrPC. It is quite obvious that a forest officer has no jurisdiction/authority to investigate the offence unless he is authorised by a Magistrate for this purpose (See Anand Kumar Goenka v. State of M.P. and others²). Therefore the forest officer cannot file a charge-sheet directly in a Court of law saying that an offence has been committed under the provisions of the Act of 1984. The only remedy available to him to file complaint under Section 200 of the CrPC, as such, the trial Court as well as the revisional Court both are absolutely justified in not entertaining the charge-sheet allegedly filed by the forest officer for offence punishable under Section 3 of the Act of 1984 and the remedy, which is open to the petitioner/forest officer, is to file complaint under Section 200 of the CrPC, which has not been resorted to and the procedure which is not available to the forest officer has been resorted to, for which, learned Magistrate is not competent to take cognizance of the offence under the Act of 1984 on a complaint filed by the forest officer. I do not find any infirmity or illegality in the orders passed by the trial Court or by the revisional Court.

13. For the foregoing reasons, the petition under Section 482 of the CrPC deserves to be and is hereby dismissed. However, it is open to the State/forest officer to file complaint under Section 200 of the CrPC in accordance with law.

Sd/-

(Sanjay K. Agrawal)
Judge

B/-

HIGH COURT OF CHHATTISGARH AT BILASPUR**CrMP No.571 of 2014****Petitioner**

State of Chhattisgarh

Versus**Respondents**

Ishan Yadav and others

(English)

Forest Officer cannot file charge-sheet for offences punishable under Section 3 of the Prevention of Damage to Public Property Act, 1984.

(हिन्दी)

वन अधिकारी, लोक संपत्ति नुकसान निवारण अधिनियम, 1984 की धारा 3 के अंतर्गत दंडनीय अपराध के लिए आरोप पत्र प्रस्तुत नहीं कर सकता।