

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Amk

CRIMINAL APPLICATION NO. 679 OF 2017

B. K. Gheware

.. Applicant

Vs.

The State of Maharashtra

.. Respondent

Mr. A. R. Pitale for the Applicant.

Mr. Ajay Patil, APP for the Respondent-State.

CORAM : SMT. BHARATI DANGRE, J.

DATE : 24th SEPTEMBER, 2019.

P. C. :

1. The present application is filed by the Applicant, a Government servant by invoking jurisdiction of this Court under Section 482 of the Code of Criminal Procedure, being aggrieved by the Judgment dated 17.09.2016 passed by the Additional Sessions Judge, Raigad-Alibaug thereby upholding the order passed by the JMFC, Karjat in Discharge Application No. 146 of 2014 by which Discharge Application filed by the Applicant has been rejected.

2. Perusal of the facts which were placed before the Magistrate and subsequently before the Additional Sessions Judge would disclose that the Applicant at the relevant point of time was working as Sub-

Divisional Officer at Panvel Sub-Division. While he was discharging his duties, a request was made by Tahasildar, Karjat by his letter dated 30.03.1998 informing the Applicant that certain applications have been made by the villagers addressed to Tahasildar in respect of Mutation Entry No. 2238 and it was stated that the mutation entry was wrongly recorded a land holding. The Tahasildar, Karjat had also made a reference to a letter dated 05.12.1997 received from Range Forest Officer, Karjat intimating that there were no final orders passed in respect of acquisition of the said land in question under the Maharashtra Private Forest (Acquisition) Act, 1975 and also informed that mutation entry has been wrongly recorded and sanctioned by the Circle Officer. On the receipt of the said letter, the Applicant called report from the Circle Officer which was received on 21.04.1998 and he passed an order on 30.05.1998 by which Mutation Entry No. 2238 was cancelled and he recorded the Mutation Entry No. 2253. The Applicant subsequently became aware of Sinha Mitra Committee report and it then dawned upon him that wrong information was submitted to him by the concerned Tahasildar and the Circle Officer and Forest Officer in respect of land in question and therefore he has erred in cancelling Mutation Entry No. 2238 by his order dated 30.05.1998. For rectifying

the said mistake and to review the order dated 30.05.1998, he addressed a letter to Collector, Raigad pointing necessary facts and sought to review his order under Section 258 of the Maharashtra Land Revenue Code. Necessary permission came to be granted by the Collector, Raigad on 15.07.1998 and the Applicant was granted the permission to review the order and rectify the error and give necessary effect to the revenue records of the land in question. Accordingly, based on the permission granted by the Collector, the Applicant reviewed the order dated 30.05.1998 and passed a fresh order dated 31.07.1998 by which he restored the Mutation Entry No. 2238.

3. It is also pertinent to note that this order passed by the Applicant was challenged by the land owner before the Maharashtra Revenue Tribunal and the matter also landed in this Court and the order passed on 31.07.1998 was confirmed. This factual background of the matter lead to filing of the FIR and the two impugned orders are consequences of the said proceeding initiated. It is pertinent to note that there is report placed on record by the Police Inspector, Raigad, Alibaug. Report dated 06.02.1998 clearly mention that when the role of the present Applicant was inquired into, it is revealed that he has no connection with the said offence and he has no participation in the same. However,

it is alleged that in the opinion of the Law and Judiciary, the department has made a reference to the Indian Forest (Conservation) Act, 1980 and observed that the SDO ordered mutation of the reserved forest land in the possession of the private person without making reference to the said Act of 1980. The Department of Law and Judiciary has recorded that the SDO has prima facie violated the provisions of Section 3 of the Indian Forest (Conservation) Act.

4. On the chronology of events collated through the documents placed on record, it appears that on the enactment of Maharashtra Private Forest (Acquisition) Act, 1975 w.e.f. 30.08.1975, the land belonging to one Shri Yashwant Narhar Rajmachikar in Mouje Kalamb, admeasuring 1456.32 acres vests in the Government and the possession of the same was taken by the then Divisional Range Forest Officer, Alibag on 03.09.1975. The fact of the possession being taken by the Forest Department was made known to the Assistant Collector, Panvel and it is alleged that he had admitted the said fact in his statement dated 25.02.1980 and claimed compensation of Rs.5,94,000/-. It is presumed that the Revenue Authorities thus posed the knowledge about the land admeasuring 1464.62 acres being acquired by the Forest Department. It is alleged that in respect of this knowledge, the revenue entry No.2238

came to be cancelled and again restored on 30.05.1998 and this was done without the permission from the Central Government under the Forest (Conservation) Act, 1980. The Applicant is alleged to have violated the provisions of the said Act by making reference to the decision of the Apex Court in the case of *T.N.Godavarman Thirumulkpad vs. Union of India (1997 2 SCC 267)* where the terms 'Forest' has been construed in the wider term and extend even to a private forest. The Applicant has been charged with violation of Section 3A of the Forest (Conservation) Act, 1980.

5. It is not understood as to how there is violation of Indian Forest (Conservation) Act, 1980 and in any case the Applicant in the capacity of SDO is no authority to convert the forest land, as he has only altered the mutation entry and which he has done with the approval of the Collector. Thus, the order passed by the Magistrate which overlooks this important aspect in dealing with the application of discharge calls for an interference, since the Applicant cannot be attributed, the violation of the provisions of Indian Forest (Conservation) Act, 1980. The report of the Sub-Divisional Officer addressed to the Collector disclosed that there were no final orders passed about the acquisition under the Maharashtra Private Forest (Acquisition) Act, 1975 and

though the Forest Department was repeatedly sought information about the final orders, they were not made available. When an inquiry was made with Circle Officer, it was noted that he had made entry No. 2238. The Sub-Divisional Officer submitted a bifurcation of the lands as 446.46 belonging to the State Government and 1464.62 acres which was to be reallocated to the owner. When it was confirmed on enquiry that the possession of 1462.18 acres was taken on 06.09.1975 and this was also intimated to the Assistant Collector, the mutation entry was required to be rectified. The Sub-Divisional Officer categorically mentioned that in terms of the Indian Forest Act, 1927, the said land was to be mutated in the 7/12 extract as a Government land and therefore action under Section 258 was required to be initiated. On this fact being placed, the Collector, Raigad responded to the request of Sub-Divisional Officer and granted him permission to review his order dated 30.05.1998 and make the necessary entries in the 7/12 extract. Pursuant to this permission from the Collector, the Petitioner passed the detailed order on 31.07.1998.

6. It is pertinent to note that the name of the Applicant came to be inserted after the considerable long period of time and merely on the premise that the report of the Tahasildar, Karjat and Circle Officer,

Kasheli should not have been solely relied on and has been on the basis of allegation against him. In fact, the Collector of the District has granted permission to the Applicant to review the order and correct the mutation entry invoking necessary provisions of Land Revenue Code. There is no scope of initiation of criminal proceeding against the Applicant alleging violation of the Indian Forest (Conservation) Act, 1980. The Applicant in no case is part of the large scale allegations of 4000 hectares of forest land which was the subject matter of enquiry through Sinha and Mitra Committee for the period of 10 years and the Committee had submitted its report in the year 1998 which came to be accepted by the State Government and action had already been initiated against the responsible officers. The FIR also do not allege him to be a part of the controversy nor he was referred to by the Inquiry Committee Report. As far as violation of the provisions of Conservation of Forest Act is concerned, the said Act contemplates a restriction of de-reservation of forest or use of forest land for non-forest purpose. No such act is attributed to the Applicant and it was only as regards the mutation entry exclusively within the purview of the Maharashtra Land Revenue Code is involved and as a Revenue Officer in the hierarchy of permission of the superior, the Petitioner has rectified the entry. The

initiation and continuation of the criminal proceeding against the Applicant is thus without any substantial allegations as regards the violation of the provisions of the Forest (Conservation) Act, 1980.

7. In such circumstances, the Applicant ought to have been discharged, since there was no basis for involving him and charging the offences which were invoked and applied against him, the matter was reviewed at the level of Collector under the Revenue Code and in such circumstances, the impugned order deserves to be quashed and set aside.

8. Accordingly the Application is allowed. No order as to costs.

[SMT. BHARATI DANGRE, J.]