

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.5097 OF 2019

Vijay Singh Chauhan ... **Petitioner**
Versus
The State of Maharashtra ... **Respondent**

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Mr.Shirish Gupte, Senior Counsel i/b. Mr.Ganesh Bhujbal,
Advocate the Petitioner.

Mr.A.R.Kapadnis, APP for the Respondent/State.

Mr.Vijay Kadam, PSI, Kurar Police Station

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CORAM : A.M.BADAR J.

DATED : 15th OCTOBER 2019.

P.C. :

1 By this petition, the petitioner/original accused is challenging the Order passed by the learned Additional Sessions Judge, Borivali Division, Dindoshi, Mumbai on 31st July 2019 in Criminal Revision Application bearing No.54 of 2015 thereby setting aside the Order dated 09/01/2015 passed by the learned Metropolitan Magistrate, 67th Court, Borivali Court, Mumbai discharging the accused of offences punishable under Section 332, 353, 323, 504 and 506 (II) read with Section 34 of the Indian Penal Code.

2 Heard the learned Senior Counsel for the petitioner/original accused. The learned Senior Counsel drew my attention to the Order dated 5th November 2003 passed by the Division Bench of this Court in Appeal No.769 of 1994. The learned Counsel submitted that in terms of this Order, the remedy, if any, with the Forest Officer was to apply in the suit for removal/demolition of construction or development site. My attention is also drawn to the Order passed by the Learned Metropolitan Magistrate on an application for discharge moved by the petitioner/accused. By relying on the letter dated 08/08/2013 issued by the Chief Conservator of Forest and Director of Sanjay Gandhi National Park to the Principal Secretary (Forest), it is canvassed that the subject land was in possession of Manglya Ladkya Ghatal and the Forest Department itself had instructed that as the land is not in possession of the Forest Department, authority to take action is with the Revenue Department or the Municipal Corporation. Therefore, there was no cause of the Forest Officers to visit the spot for removal of encroachment as alleged. In this view of the matter, in submission of the learned Senior Counsel for the petitioner/original accused, the learned Additional Sessions Judge is not correct in interfering with the Order of discharge of the petitioner/accused passed by the learned Metropolitan Magistrate.

3 I have considered the submissions so advanced and also perused the record made available.

4 Subject FIR came to be lodged by Pratap Deviraj Rajput, the Divisional Forest Officer (Wild Life – II) of the Sanjay Gandhi National Park and that FIR has resulted in registration of Crime No.116 of 2013 against the petitioner and other accused persons for offences punishable under Sections 332, 353, 323, 504 and 506-II read with Section 34 of the Indian Penal Code.

5 Averments in the FIR are to the effect that on 21/04/2013, the First Informant/Divisional Forest Officer has received a message from the Chief Conservator of Forest and Director of Sanjay Gandhi National Park that some unauthorized construction is being effected at Appapada, Malad (East) area of the National Park. The First Informant stated in his FIR that accordingly, by taking with him Range Forest Officer, Tulashi namely Dahibavkar, Forester Devare and Forest Labourers Madhukar Varate and Vishnu Dhondi, he reached on the spot of the incident. The First Informant/Divisional Forest Officer further alleged in his FIR that on the spot of the incident, persons named Kashiram Dhinde, Hakim Vakharwala and Vinayak Jondhale were effecting encroachment by erecting iron pillars on the forest land. Upon being questioned, those three persons had informed that they are doing the work of Vijay Chavan (Marwadi)- the petitioner herein. The First Informant further reported that when the encroachment was being removed by them, the petitioner arrived at the spot. He started shouting and caused gathering of mob on

the spot. The First Informant further reported that then the petitioner/accused pick up the iron bar in his hand and rushed on person of the First Informant. He abused the First Informant, who happens to be the Divisional Forest Officer (Wild Life-II), Sanjay Gandhi National Park. He threatened the team members of the Forest Department that they should leave the spot or else each one will be killed. It is further reported that thereafter other accused persons namely Kashiram Dhinde, Hakim Vakharwala and Vinayak Jondhale also rushed on person of all team members of Forest Department and assaulted all of them including the First Informant.

6 Version of the First Informant is gaining corroboration from statements of witnesses such as Ramagaya Yadav-owner of the Pan Stall, Shailesh Devare-Forester, Digambar Dahibavkar-Range Forest Officer etc.

7 At the stage of framing of charge what is required to be seen is whether there is sufficient ground for proceeding against the accused. It is required to be seen that whether the charge is groundless or the trial Court, with material on record, is in a position to frame the charge. What is sought to be pointed out is the matter of evidence before the learned trial Court. Whether the land belongs to the Forest Department or Manglya Ghatal or whether the Forest Department was empowered to remove the

encroachment or not are questions which need to be determined at the trial. However, the material gathered by the Investigator reveals that there is ground for presuming that the petitioner/accused has committed the offence as alleged warranting his trial. At the stage of framing of charge, the question as to whether the land belongs to the private person or the Forest Department is not relevant and cannot be gone into. Even the averments in the FIR coupled with the statements of witnesses on record are sufficient to frame charge against the accused persons. Considering the fact that overwhelming material is available on record to proceed against the petitioner/original accused, no infirmity can be found in the impugned Order by which the learned Additional Sessions Judge was pleased to set aside the Order of discharge passed by the learned Metropolitan Magistrate. Therefore, the Order :

ORDER

The Writ Petition is dismissed.

(A.M.BADAR, J.)