

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPLICATION NO.226 OF 2022

Applicants : 1) **Rahul Pannalal Ballgotre**,
Age 32 Yrs., Occu. Operator,
Add. R/o Ghoti, Post Goregaon,
Tq. Goregaon, Dist. Gondia.

2) **Nitin Jugalkishor Rathi**,
Aged 49 Yrs., Occu. Bussiness,
Add. Dhanraj Nagar, Chandur Rly.
Tq. Chandur Rly., Dist. Amravati.

– Versus –

Non-Applicant : **The State of Maharashtra**,
Through the Range Forest Officer,
Forest Department, Wadali Range, Wadali,
Amravati, Tq. & Dist. Amravati.

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Miss Sapna Jadhav, Advocate for the Applicants.
Mr. H.D. Dubey, A.P.P for the Non-Applicant/State.

CORAM : **VINAY JOSHI, J.**
RESERVED ON : **19th AUGUST, 2022.**
PRONOUNCED ON: **22nd AUGUST, 2022.**

J U D G M E N T :-

Heard finally by consent of both sides.

02] **Admit.**

03] Since similar challenge has been raised in both applications, for the sake of convenience, they are heard and taken together for disposal. The parties of both applications are one and the same. The applicants have sought to quash a complaint registered against them by the Range Forest Officer bearing POR Nos.26/2012 and 37/2015.

04] For the sake of convenience, the facts of Criminal Application No.226/2022 are referred in brief. On 24/07/2019 at Amravati-Chandur Railway Road in Reserved Forest Area, near BSNL Tower, one JCB bearing Registration No.MH-27/AC/9608 was found excavating the forest

land in Forest Compartment No.71 without any authority/permission. The Forest Officer enquired with the driver of JCB about necessary permission for excavation, but it was informed that no such permission was obtained. During the course of enquiry by the Forest Officer, it was revealed that a vast piece of land has been excavated. It was found that there was a fresh clearing, several trees were damaged and the land was damaged by digging big pits. The Range Forest Officer has registered POR No.26/2012 and investigated the matter. Applicant No.1-Rahul Balgotre was driver of the JCB, which was owned by applicant No.2-Nitin Rathi. It was revealed that the excavation work was undertaken by M/s. Ravi Infrabuild Projects Pvt. Ltd. (hereinafter referred to as 'Company' for short) of which accused No.3-Satyanarayan Kumawat was the Engineer and accused No.4-Chandrakant Jadhav was the Project Manager. Having regard to several illegalities, crime was registered for the offence punishable under Section 26(1)(a)(b)(d)(e)(f)(g)(h) of the Indian Forest Act, 1927 and Section 2 of the Forest (Conservation) Act, 1980. The Range Forest Officer being the competent authority has filed the complaint to the Court of Magistrate, which has been registered as R.C.C. No.105/2020.

05] The applicants, who are the driver and owner of JCB vehicle, have challenged the maintainability of criminal complaint along with order of

issuance of process. The other two accused i.e. accused Nos.3 and 4, who are from the Company, are not before the Court. The challenge is raised on the ground that the contents of the complaint are totally false. It is submitted that merely because the JCB was found at the relevant place, they have been falsely implicated in the case.

06] The learned Counsel appearing for the applicants took me through the order passed by the competent authority in confiscation proceedings. In the said proceedings, the Assistant Conservator of Forest has rejected the proposal of confiscation by making certain observations. The applicants have laid hands on said observations to contend that the authority has ruled out the use of JCB in causing damage to the land. My attention has been invited to the observations at Point Nos.2 and 3 of the authority, wherein it has been stated that there is no possibility of use of seized vehicle in causing damage to the scheduled property. The said argument does not hold any water as there may not be any damage to the scheduled property. However, clause (e) to Section 26(1) of the Act would apply in case of causing damage in felling any tree or cutting or dragging any timber. Besides that, the investigation papers contain panchnama and various statements, which *prima facie* discloses that hundred of trees have been damaged.

07] The applicants' learned Counsel would submit that so far as applicant No.2-Nitin is concerned, absolutely there is no material. It is argued that applicant-Nitin has assigned his JCB on hire basis to the Company on monthly charges of Rs.80,000/- and thus the Company was having control of JCB. Therefore, according to applicant, JCB owner cannot be prosecuted for the acts committed by the Company. I do find substance in the said contention, because it is the complaints case itself that though the JCB was owned by applicant-Nitin, however, it has been assigned on hire basis to the Company, who was executing work at the relevant time. Pertinent to note that during investigation, notice was issued to the applicant-Nitin dated 21/08/2019, which also demonstrates that the concerned road widening work was being carried by the Company. There is no concept of vicarious liability under the criminal law. Bare reading of complaint and related paper nowhere indicates that the applicant-Nitin was having role in the work, which was carried by the Company. It is apparent that applicant-Nitin has merely assigned his JCB on hire basis to the Company and for that reason he cannot be prosecuted for the acts of the Company while JCB was under their control. Thus, the case is made out to the extent of applicant No.2-Nitin Rathi for quashing complaint.

08] As regards to applicant No.1-Rahul is concerned, he was found driving JCB at the relevant time. *Prima facie* said material is sufficient to proceed against him as he was actually found committing alleged breaches under the provisions of the Indian Forest Act and the Forest (Conversation) Act. The panchnama carried on the spot also supports the contents of the complaint. It is a matter of defence that no damage was caused to the trees. Thus, there is sufficient material to proceed against applicant No.1-Rahul, who was driver of JCB.

09] As regards to Criminal Application No.227/2022 is concerned, the allegations are almost same. The allegation is that there has been a trespass with JCB and illegally causing damage to the forest property without any permission. As discussed above, there is no role of applicant No.2-Nitin in said incident. However for the reasons stated above, there is *prima facie* case to proceed against applicant No.1-Rahul being driver of the vehicle and found at the time of inspection carried by the forest authorities.

10] In that view of the matter, both the complaints do not disclose *prima facie* material against applicant No.2-Nitin. Continuation of complaint against him would be in futility and abuse of the process of Court, therefore,

the complaints are liable to be quashed to his extent. However, there is *prima facie* material against applicant No.1-Rahul to proceed further.

11] In the circumstances, both the criminal applications are partly allowed. POR bearing registration Nos.26/2012 and 37/2015 having R.C.C. Nos.105/2020 and 109/2020 are hereby quashed and set aside as regards to applicant-Nitin Rathi. Both applications as regards to applicant-Rahul are hereby rejected. Both complaints shall proceed further as regards to applicant-Rahul and rest of the accused.

12] Both applications are disposed of in the above terms.

(VINAY JOSHI, J.)

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