

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-55268-2022

Date of Decision: 08.12.2022

SANJAY DUTT & ORS.

... Petitioners

VS.

STATE OF HARYANA AND ANOTHER

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Dr. Anmol Rattan Sidhu, Sr.Advocate with
Mr. Raghav Gulati, Advocate and
Ms. Sudha Advocate for the petitioners

Mr. Abhinash Jain, DAG Haryana

Sandeep Moudgil, J.

(1). The jurisdiction of this court has been invoked under section 482 for quashing of complaint No.41/2022 titled as “Range Forest Officer, Gurugram vs. Satpal Singh and Ors.” (Annexure P-5) dated 07.09.2022 alongwith summoning order dated 02.05.2022 (AnnexureP-6) and all other subsequent and consequential proceedings arising out of complaint initiated under Section 4 of Punjab Land Preservation Act, 1900.

(2). The factual matrix leading to the filing of present petition unfolds as the company – Sector 113 Gatevida Developers Private Limited is a subsidiary company of TATA Housing Development Company Limited and is undertaking development of the Projects namely “Gurgaon Gateway” and “La Vida” at Sector 112 and 113, Village Bajghera, Tehsil and District Gurugram (Haryana) distributed over 21.04375 acres parcel of land. Notice no.219.G dated 02.09.2021 was issued by Range Forest Officer, in the name of the petitioners (accused persons) which was received at site office of the company on 06.09.2021.

(3). Allegations leveled against the petitioners in the notice are that a Forest Damage Report No.079/495 has been received in the office of the respondents and as per the report, the petitioners have violated provisions of Section 4 of the Punjab Land Preservation Act, 1900 by illegally uprooting and destroying trees with help of JCB at Sector 113 Gatevida, Gurugram. The petitioners were asked to come present before the Forest Block Officer on or before 07.09.2021 so as to justify their actions. On 07.09.2021 the company duly submitted its reply whereby it was informed that the notice was received on 06.09.2021 i.e., one day prior to the date of hearing and sought time to file its detailed reply. The company had submitted its detailed reply on 16.09.2021 whereby it was informed to the District Forest Officer (Respondent) that petitioners No.1 and 2 are not associated with the company.

(4). Learned Senior counsel for the petitioner contends that the present complaint is wholly misconceived, arbitrary, wrong, illegal and is not maintainable. The petitioners have been falsely implicated in the present complaint. It is contended that neither the petitioners have been specifically named in the complainant nor is there any specific allegation levelled against them in the entire complaint. It is further contended that the petitioners are neither the managing directors nor the whole time directors of the company and have no concern with the daily affairs of the company. They have been arrayed as an accused only because of their affiliation with TATA GROUP and its subsidiaries. Without verifying the true facts, the respondents have arrayed the petitioners as accused in the complaint. Further, the trial court is stated to have wrongly summoned the petitioners without being satisfied of any sufficient ground or *prima facie* case against the petitioners and also no reason

whatsoever has been cited in the summoning order dated 02.05.2022. Reliance has been placed on **Lalan Kumar Singh & Ors. vs. State of Maharashtra, Criminal Appeal No.1757 of 2022** decided on 11.10.2022 wherein the Supreme Court held that issuance of process is not an empty formality and the Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists or not and formation of such opinion is required to be stated in the order itself.

(5). It is further contended by learned Senior Counsel for the petitioners that the company has already obtained all the requisite permissions to construct and develop Group Housing projects over 21.04375 acres of licensed land, which is not the part of the Forest Area. In fact the said area is duly covered under the provisions of Haryana Development and Regulations of Urban Areas Act, 1975.

(6). Another argument raised is that on a bare perusal of the complaint, it can be seen that the respondents have miserably failed to specify the date, time and place of the alleged offence and also as to which person(s) was/were involved in the alleged offence. He has relied upon the **Ravindranatha Bajpe v. Mangalore Special Economic Zone Ltd, 2021 SCC OnLine SC 806**, to contend that the summoning Magistrate has to record his satisfaction about the prima facie case and the role played by the accused persons, in their respective capacities, which is a sine qua non for initiating criminal proceedings against them.

It is the contention of learned Senior Counsel for the petitioners that the petitioners cannot be held vicariously liable for the alleged offences on behalf of the Company, especially when the Company itself has not been impleaded

as an accused in the said complaint. Accordingly, he prays for quashing of the complaint as well as summoning order dated 02.05.2022 (Annexure P-6). Reliance has been placed on *Aneeta Hada vs. M/s Godfather Travels and Tours P.Ltd. (2012) 5 SCC 661*, to contend that since the company had not been impleaded as an accused, the liability of the respondent as its Managing Director could not be attached under Section 141 of the Negotiable Instruments Act.

(7). It is vehemently contended that the respondents have failed to specify and demarcate the area in the notice as well as in the complaint where the alleged offence has occurred. The officials of respondents have mentioned in the complaint that the petitioners had uprooted and destroyed trees in 'Section 113 Gatevida, Gurugram' whereas, 'Sector 113 Gatevida' is alleged to be the name of a company, which is developing the project over 21.04375 acres of parcel of licensed land and this parcel of land does not form part of the Forest Area, in regard thereto, the Company has already obtained all requisite permissions to construct and develop Group Housing Projects in the given area and the said area is duly covered under the provisions of Haryana Development and Regulations of Urban Areas Act, 1975. Moreover, there is no mention of specific date of the alleged offence in the entire complaint and its preceding notice.

(8). Heard learned counsel for the petitioners and gone through the case file.

(9). As per the notification No.S.O.8/P.A.2/1900/S.4/2013 dated 04.01.2013, the cutting of trees or timber, in the specific areas, has been

prohibited, for a period of fifteen years. Section 4 of the PLP Act is reproduced as under:-

4. Power to regulate, restrict or prohibit, by general or special order, within notified areas, certain matters.— *In respect of areas notified under section 3 generally or the whole or any part of any such area, the Provincial Government may, by general or special order temporarily regulate, restrict or prohibit—*

(a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3;

(b) xxxx xxxx

(c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest-produce other than grass, save for bonafide domestic or agricultural purposes of rightholder in such area;

(10). The Notice bearing No.219.G dated 02.09.2021 was issued to the petitioners by the respondents under Sections 4&5 of the Punjab Land Preservation Act, 1900 wherein it was stated that Forest Damage Reports No.079/495 have been received and due forest crime committed by the petitioners, the environment has been damaged since “*you have uprooted trees illegally with JCB in the area of Sec-113, Gate Vida, Gurugram...*”. The petitioners submitted their reply to the notice dated 16.09.2021 (Annexure P4) wherein description of the group housing licences granted to 21.04375 acres of land in Section 112 & 113, Gurugram, has been given to develop a primary school on 1 acre of the said Project Land, in relation thereto, approval has been granted by Director General, Town and Country Planning, Haryana on 20.07.2021 which mandated for completion of school on or before 02.04.2023

and further, 500 sq.yards of land was to be transferred to DHBVN for setting up a switching station and that both the lands of switching station and primary school are contiguous. It is in regard to the above averments, in the said reply, the petitioners have categorically averred as under:-

“With the intent to comply with these statutory conditions for transfer of the school and switching station land, we had recently undertaken the exercise to prepare the sites for handover. Since the land was lying vacant for some time, some wild shrubs had grown over these lands, which may have been removed inadvertently while preparation of these sites. This was an unintentional act and we assure that no major/big tree has been cut...”

(11). Undoubtedly, the petitioners might have been granted sanction for development over the land in dispute by the Town and Country Planning Department, Haryana. However, what is ascertainable is whether the terms and conditions specified in the sanction dated 15.02.2019 have been complied with. The averments made by the petitioners inasmuch as the Company is developing the project over 21.04375 acres of licensed land, which does not form of ‘forest area’ is bald statement. Once the notification in respect of the land in dispute has been issued on 04.01.2013, as relied upon by the respondent and appended with the complaint, notifying the specified land/area under Section 4 of the PLP Act, which forms part of the land in dispute, in these circumstances, it does not lie in the mouth of the petitioners to say that the subject land is not the ‘forest area’ merely because the licence has been granted for development of project on the said parcel of land constituting in Section 113 Gatevida.

(12). Further, in so far as the assertion of the petitioners that the Company had obtained all requisite permission to construction and develop Group Housing Projects in the given area and that occupation certificate dated 15.02.2019 has also been issued by the Town and Country Planning Department, it is pertinent to highlight that as per Clause-10 of the said occupation certificate dated 15.02.2019, the petitioners were required to “comply with all the stipulations mentioned in the Environment Clearance” issued by State Environment Impact Assessment Authority, Haryana vide No.SEIAA/HR/2013/962 dated 15.10.2013. Meaning thereby that the environment clearance/permission was required to be obtained from the concerned environmental authority of the State Government before carrying out any developmental project on the subject land. There is nothing on record forthcoming to establish that any permission/ sanction/environmental clearance was ever obtained by the petitioners for cutting or felling or uprooting of trees or removing of shrubs over the ‘notified forest land’. Even otherwise, the petitioners have themselves admitted in their reply to the notice dated 18.09.2021 (Annexure P4), reproduced above, they have undertaken the exercise to remove the “wild shrubs” and thus, the allegations leveled by the respondents with regard to uprooting of trees over the subject land, cannot be brushed aside preliminarily. As such, this Court in exercise of its writ jurisdiction cannot decide the disputed questions of fact which can only be proved in trial.

(13). That apart, the company, as is well-known, acts through its directors or authorised officers and they cannot seek an escape route by seeking quashing of the proceedings under [Section 482](#) of the Code of

Criminal Procedure solely on the foundation that the company has not been impleaded as an accused *inasmuch* as the deemed liability includes both the company and the officers in-charge and hence prosecution can exclusively be maintained against the directors or officers in-charge depending on the averments made in the complaint petition.

(14). In **Gorige Pentaiah vs. State of AP & Ors. (2008) 12 SCC 531**, the Supreme Court held that the inherent powers of the High Court under [Section 482 CrPC](#) is to act *ex debito justitiae* to do real and substantial justice for the administration of which alone it exists, or to prevent abuse of the process of the court, to give effect to an order under the Code or to secure the ends of justice. Such inherent powers, though wide, ought to be exercised sparingly, carefully and cautiously and only when such exercise is justified by the tests specifically laid down in this Section itself.

(15). In **State of Haryana & Others v. Bhajan Lal & Others, (1992) Supp. (1) SCC 335**, the Hon'ble Supreme Court categorized the certain nature of cases, wherein the High Court can exercise its inherent powers under Section 482 CrPC either to prevent abuse of the process of the Court, or otherwise, to secure the ends of justice. From a perusal of the allegations leveled in the complaint vis-à-vis the reply submitted by the petitioners, it cannot be said that the petitioners have been able to bring their case squarely under any of the categories laid down by the Supreme Court in **Bhajan Lal's** case (supra). A mere allegation that the initiation of the criminal proceedings is perpetuated by an intense desire to pressurize the petitioners would not be fully established. Such a plea of motive has to be accepted with circumspection and greater caution as the same is a double edged sword, more-so, when triable

issues have raised which cannot, at any rate, be determinable in writ jurisdiction.

(16). Furthermore, for the purpose of invoking jurisdiction under Section 482 CrPC, it must be shown to the Court that the allegations, even if accepted in its entirety, do not make out a criminal case. Where the petitioner urges a Court to weigh the probative value of the allegations leveled in the version as defence, the same would be an exercise in ascertaining the dispute in question of fact. The High Court, while exercising its jurisdiction under Section 482 Cr.P.C., would not ordinarily enter into the said arena and to take upon itself the burden of ascertaining the correctness of respective versions and to pre-judge the investigation on the basis of the probabilities propounded by the respective parties. Such an exercise is neither warranted nor desirable under Section 482 Cr.P.C. The correctness of either of the versions is yet to be determined. Such undue haste in culling the criminal proceedings have a greater potential of doing much harm and tend to allure the Court into opining on a case pre-maturely when the investigation has not yet been concluded. It is not for the High Court to ascertain as to what evidence may be collected or ought to be collected during the course of investigation. Whether an offence is made out or not and whether the power under Section 482 Cr.P.C. in a case of such a nature has to be exercised can only be seen after the investigation is complete and the entire evidence/material sought to be relied upon by the prosecution to prove its case is collected and filed as a part of a report under Section 173 Cr.P.C.

(17). Whether the initiation of the criminal proceedings is perpetuated by greed or by malice either by the complainant or by the accused, cannot be

conclusively determined on the strength of the documents sought to be proposed in defence and when such document is itself in dispute. The Court is not required to examine the probative value of the respective documents and to record a finding discarding one version in preference to the other. Such an exercise should not be ordinarily undertaken by the High Court under Section 482 Cr.P.C. more so when the allegations are still under investigation and have not yet been conclusively determined.

(18). Undoubtedly, cutting of even a single tree is a matter of concern. Having regard to ecological services of the trees, all efforts have to be made to protect every tree. At the same time, in certain situations, cutting of trees is permissible under the law, with the requisite approval of the statutory authorities (which in the present case, is not forthcoming), subject to compliance of the statutory conditions, following all necessary safeguards, including afforestation and translocation wherever possible.

(19). In view of the above discussion and observations, the instant petition is dismissed *in limine*.

08.12.2022
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned?
2. Whether reportable?

Yes/No
Yes/No