

IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

HON'BLE SRI JUSTICE RAKESH THAPLIYAL

CRIMINAL MISC. APPLICATION NO. 2364 OF 2023

(under Section 482 of Cr.P.C.)

Yakub Ali

.....Applicant.

Versus

State of Uttarakhand

....Respondent.

Counsel for the Applicant

: Mr. Abhijay Negi, learned counsel.

Counsel for the Respondent

: Mr. M.A. Khan, learned A.G.A.

Judgment Reserved on: 21.12.2023

Judgment Delivered on: 10.01.2024

The Court made the following:

JUDGMENT:(per Hon'ble Sri Rakesh Thapliyal)

By the instant C-482 application, the applicant is challenging the proceedings of Criminal Case No.1100 of 2010, pending in the Court of the learned Chief Judicial Magistrate, District Haridwar, whereby the applicant is facing trial in respect of offences punishable under Section 9 read with 51 of the Wildlife Protection Act, 1972, Sections 26, 41, 42 and 63 of the Forest Act, 1927, and Section 2 of the Forest Conservation Act, 1980.

2. Brief facts of the case are that on 23.12.2008, the applicant, who was the Forester at the Khanpur Range, District Haridwar, informed his Forest Range Officer about the clearing of bushes and digging in the forest area by one Mr. Qamaruzmma. The applicant further informed that the activities were stopped and on the objection of Mr. Qamaruzmma that he is doing the said activities in his own

property, and he was asked to request the authorities for survey and determination of boundaries. Thereafter, on 30.12.2008, Mr. Qamaruzmma made a representation to the Divisional Forest Officer, District Haridwar, requesting for the survey to determine the boundary between his land and the forest land, and in response to his representation, at the behest of the Administrative Officer, Forest Department, Haridwar, his request for the survey was accepted. Consequently, the survey was conducted on 05.02.2009 in the presence of the officials of Forest Department and Revenue Department, and the applicant was also present in the survey in his official capacity of Forester. Furthermore, in pursuance of the aforesaid survey, a final survey report was submitted by the surveyor, according to which, the survey and boundary demarcation was done, and the positioning of boundary pillars from No.1 to 12 was determined. On 25.05.2009, the Forest Ranger, Khanpur Range, issued a notice against Mr. Qamaruzmma for doing the alleged illegal and unauthorized activities in the reserved forest area, and Mr. Qamaruzmma was charged with destroying plantations, uprooting the roots of old trees and plowing of forest reserved area, boundary of which, was adjacent to the farm boundary of Mr. Qamaruzmma. The said alleged illegal activities were done when the forest department was still in the process of putting out the pillars in pursuance of the previously conducted survey and have only put pillars from

Nos.7 to 12, hence, Mr. Qamaruzmma's property was taken into the control of Forest Department, and he was warned against doing any such illegal activity further. In response to the allegations, Mr. Qamaruzmma submitted before the Divisional Forest Officer, Haridwar that he conducted the alleged activities on his own land in regard to the survey conducted on 05.02.2009. Thereafter, in pursuance of the aforesaid alleged activities, two FIRs were registered against Qamaruzmma, bearing Range Case No.26/Khanpur/2009-10, which registered for the offences punishable under Section 26(h) of the Forest Act, 1927 for destroying 250-300 plantations by using JCB machine and tractor harrow, and Range Case No.27/Khanpur/2009-10 was registered for the offences punishable under Section 26(h) of Forest Act, 1927 for uprooting the roots of cut trees and plowing of forest reserved land. The said FIRs were lodged by the Forest Guards under the supervision of the applicant, as they were all part of the survey team that determined the boundaries of the forest land on 05.02.2009. In addition to the aforesaid FIRs, on 29.06.2009, a report was also submitted by the Sub-Divisional Forest Officer, Roorkee to the Divisional Forest Officer, Haridwar. The Sub-Divisional Forest Officer recorded that the survey of the site could not happen due to non-availability of some pillars and complete destruction of other pillars. He further recorded that the alleged activities occurred in pursuance of Mr. Qamaruzzma's claim on the land, as per

the survey conducted on 05.02.2009, and as per the survey report, the Forest Ranger has taken control of the land, where the alleged activities have taken place, however, no conclusive observation could be made with regard to the ownership of the disputed land. Thereafter, on the basis of the report of the Sub-Divisional Forest Officer, the applicant herein was found, *prima facie*, guilty for felling of trees and plowing of the forest reserved area, and the applicant was suspended with immediate effect. Learned counsel for the applicant submits that in the report of the Sub-Divisional Forest Officer, as well as in the suspension order, there is no specific finding recorded against the applicant, and the report of the Sub-Divisional Forest Officer is itself inconclusive with regard to the ownership of the disputed land.

3. On 23.07.2009, charge-sheets were submitted in Range Case No.26/Khanpur/2009-10 and Range Case No.27/Khanpur/2009-10 respectively, and as per the investigation conducted by the Forest Department, only Mr. Qamaruzmma was found guilty for the offence punishable under Section 26(h) of the Forest Act, 1927. Learned counsel for the applicant submits that, in the charge-sheet, it is an admitted fact that the applicant, being the Forester, initially informed the Forest Department about the encroachment activities. He submits that in the report, it is stated that Mr. Qamarzumma took the unfair advantage of the survey

conducted by the Forest Department on 05.02.2009, and his activities for encroachment would be detected, and punitive actions will be taken against him.

4. Thereafter, in terms of the inconclusive report of the Sub-Divisional Forest Officer with regard to the status of the disputed land, a three member committee was formed by the Chief Conservator of Forest, Garhwal, on 13.07.2009. The Chief Conservator of Forest submitted the findings of the Committee to the Additional Chief Secretary and Commissioner, Forest and Rural Department, Government of Uttarakhand, as per which, the correct status of the land could not be determined despite multiple visits and joint inspection with the Revenue Department was proposed for further clarity. The Committee also recorded that the dispute with regard to the legal status of the land, in question, is going on since 1993, and till date, there is no clarity with regard to the status of the land.

5. Thereafter, due to lackadaisical approval of the three-member Committee in determining the status of the land, in question, a public interest litigation, bearing Writ Petition (PIL) No.76 of 2010, "*Samer Chand Neta vs. State of Uttarakhand & others*", was filed before this Court highlighting the issue that no conclusive report has been submitted, although two years have passed. Subsequently, this Court, *vide* its order dated 30.11.2011, directed the

Principal Chief Conservator of Forest, Uttarakhand, and the Principal Secretary, Revenue Department to sit together and devise an appropriate mechanism to ascertain the land entitlement of Mr. Qamaruzmma. Thereafter, in compliance of the aforesaid order of this Court, a joint survey was conducted between 15.03.2012 to 20.03.2012 by the Revenue Department, Consolidation Department and the Forest Department for determining the status of the disputed land and it was observed that Mr. Qamaruzmma is in the rightful possession of the disputed property, however, the Forest Department officials refused to accept the findings and did not sign on the final observations.

6. Thereafter, in the midst of multiple criminal investigations against Mr. Qamaruzmma, writ petition in this Court, and multiple surveys to determine the truth behind the land encroachment allegations and illegal felling of trees in the forest reserve area, the DFO, Haridwar, under his supervision, and *vide* his order dated 28.08.2009 authorized one Mr. Mahesh Prasad Semwal, Forester to investigate forest offences which have occurred with the connivance of the forest staff. In compliance of the said order, Mr. Mahesh Prasad Semwal registered only one such case. He registered an FIR No.01/2009-10 against nine people, namely Qamaruzmma, Junaid, Naveed, Shamsad, Taiyyab, Imran, Naveen Chand Joshi, Balibir Singh Bisht, and Yakub Ali for

violation of Section 9 read with Section 51 of the Wildlife Protection Act, 1972, Sections 26, 41, 42 and 63 of the Forest Act, 1927, and Section 2 of the Forest Conservation Act, 1980. In the aforesaid FIR, the present applicant along with two other forest officials was charged as co-accused. Subsequently, the DFO, Haridwar filed charge-sheet on 13.01.2010 in the said FIR, and along with other co-accused, the applicant was also found guilty of violating Section 9 read with Section 51 of the Wildlife Protection Act, 1972, Sections 26, 41, 42 and 63 of the Forest Act, 1927, and Section 2 of the Forest Conservation Act, 1980.

7. On 30.10.2023, the office of Forest Conservator, Shivalik Circle, Uttarakhand, Dehradun passed an order in the disciplinary proceedings initiated against the application in the impugned incident.

8. On 31.05.2011 cognizance was taken by the Chief Judicial Magistrate, Haridwar in FIR No.01/2009-10 against the applicant and Criminal Case No.1100 of 2010 was registered.

9. Aggrieved with the said Criminal Case No.1100 of 2010, the applicant approached this Court by way of filing the present C482 application.

10. After perusing the allegations, and charge-sheet, *prima facie*, the commission of offence is apparently is made out against the applicant, and this is not a case, which falls under any of the category, as categorized by the Hon'ble Supreme Court in the case of ***State of Haryana vs. Bhajan Lal, 1992 Supp (1) SCC 335***, which stills holds a good law.

11. It is very strange that these proceedings are pending since 2010 and the present applicant is approaching to this Court now in the year 2023, challenging the said proceedings by giving reference that other co-accused filed C482 No.377 of 2014 and C482 No.499 of 2014, and submits that there is an interim order, and this is the reason that the trial could neither be commenced, or concluded.

12. I perused the interim order passed in those C482 applications, and in fact, by those interim orders, proceedings have not been stayed, and only the liberty was given to the applicants that they may seek an adjournment from the Trial Court, and if such an application for adjournment is moved, the Trial Court may consider the same favourably for a period of eight weeks, and it has been informed to this Court that this interim order was extended from time to time.

13. I am not expressing any opinion on the merits of other C482 applications preferred by other co-accused, bearing C482 No.377 of 2014 and C482 No.499 of 2014, but,

admittedly, in those C482 applications, there is no order for staying the proceedings. No doubt, this Court has inherent powers under Section 482 of Cr.P.C., but the same should be invoked only if there is apparently an abuse of process of law, and when, *prima facie*, no offence is made out. Here, it is important to mention that the Division Bench of this Court, in Writ Petition (PIL) No.76 of 2010, took serious note of this incident, and the relevant extract of the said judgment, is being extracted here-in-below:-

"We think that one such incident should open the eyes of the people working in the Government and entrusted to look after and manage the properties of the people in the hands of Government. We accordingly, dispose of this writ petition by directing the Principal Chief Conservator of Forest, Uttarakhand, and the Principal Secretary, Revenue Department to sit together and to devise an appropriate mechanism to ascertain the land entitlement of Kamaruzzama as well as the Chakbandi of his land, to measure the same and ensure fixation of the boundary of his land from all sides. In the event, it transpires after carrying out the such actions that Shri Kamruzzama came to be in possession of any part of the forest land, they are directed to take such recourse to law, including steps under the Forest Act read with Public Demand Recovery Act, for recovery of penal rent from Shri Kamruzzama for being in occupation of such forest land. At the same time, we direct the State Government to pursue vigorously the criminal proceeding initiated for felling and removing trees belongs to the Forest Department of the State. We want the State Government to engage an appropriate prosecutor to ensure that the perpetrators of such crime do not escape the law. At the same time, we direct Principal Chief Conservator of Forest, Uttarakhand to issue a circular in the strongest of strong words directing all his subordinates to ignore any claim made by any person howsoever influential or big he may be, that Forest Department has encroached any part of the land belonging to such person. At the same time, we make it clear that every resident of the State of Uttarakhand holding land in Uttarakhand shall be entitled to approach the Revenue Department in addition to take the legal recourse in established courts, in respect of encroachment by any of his land. In the event, Revenue

Department is of the view upon such an approach being made, that a part of land held by a person has been encroached by forest, the officer concerned of the Revenue Department shall bring the same to the notice of the Principal Secretary, Revenue Department who shall in turn bring the same to the notice of the Principal Conservator of Forest, Uttarakhand, and they thereupon, they shall settle the matter in accordance with law."

14. In the present C482 application, reliance is placed on several judgments of the Hon'ble Supreme Court, but all these judgments, as placed reliance upon by learned counsel for the applicant, are of no help, since the facts of the present case are entirely different, and after investigation, charge-sheet was filed, which itself shows that the investigating agency collected credible evidence, and therefore, this is not a case, in which, any interference is required in the pending proceedings before the Trial Court.

15. Lastly, learned counsel for the applicant, after concluding the arguments, submits that Trial Court may be directed to expedite the trial, since the trial is pending since 2010.

16. Since the learned counsel for the applicant submits that the trial may be expedited, meaning thereby, the applicant is ready to face the trial, therefore, the Trial Court is directed to make all possible efforts to expedite the trial, keeping in view of the fact that the trial is pending since 2010.

17. Subject to the aforesaid observations, the present C482 application is dismissed.

18. No order as to costs.

(RAKESH THAPLIYAL, J.)

Dated: 10th January, 2024

NISHANT