

IN THE HIGH COURT OF JUDICATURE FOR
RAJASTHAN AT JAIPUR BENCH, JAIPUR

S.B. Criminal Misc. Petition No. 4927/2014

Rakesh
Versus
State of Rajasthan

Date of Order: 28/11/2014

HON'BLE MR. JUSTICE M.N. BHANDARI

Mr. Gaurav Gupta, for the petitioner/s.

Mr. Aladeen Khan, Public Prosecutor.

BY THE COURT:

This criminal misc. petition has been filed under Section 482 CrPC for quashing FIR No. 214/2014, registered with Police Station–Mandhan, District-Alwar for offence under section 41/42 of the Rajasthan Forest Act, 1953.

It is stated police seized the dumper bearing registration No. HR-66-A-1467 carrying 'chaija stone'. The FIR was registered for offence under sections 41/42 of the Rajasthan Forest Act. The offence is not punishable beyond a period of three years thus FIR is not sustainable. The offence under section 41 of the Rajasthan Forest Act is non-

cognizable thus investigating agency cannot proceed with the FIR. The prayer is to drop the proceedings by quashing impugned FIR.

Be that as it may, FIR has been registered for offence under sections 41/42 of the Act of 1953. Section 41 of the Act gives power to the State Government to make rules to regulate transit of forest produce and section 42 provides for penalty for breach of rules made under section 41. Both the sections are reproduced hereunder -

41. Power to make rules to regulate transit of forest produce-

(1) The control of all rivers and their banks as regards the floating of timber as well as the control of all timber and other forest produce in transit by land or water is vested in the [the State Government] and it may make rules to regulate the transit of all timbers and other forest produce.

(2) In particular and without prejudice to the generality of the foregoing powers, such rules may-

(a) prescribe the route by which alone timber or other specified forest produce may be imported, exported or moved into, from or within [State Government;]

(b) prohibit the import or export or

moving of such timber or other produce within defined local limits, without a pass from an officer duly authorised to issue the same or otherwise than in accordance with the conditions of such pass;

(c) provide for the issue, production and return of such passes and for the payment of fees therefore;

(d) provide for the stoppage, reporting, examination and marking of timber or other forest produce in transit, in respect of which there is reason to believe that any money is payable to the [State Government] on account of the price thereof, or on account of any duty, fee, royalty or charge due thereon, or to which it is desirable for the purpose of this Act to affix a mark;

(e) provide for the establishment and regulation of depots to which such timber or other produce shall be taken by those in charge of it for examination, or for the payment of such money, or in order that such marks may be affixed to it; and the condition under which such timber or other produce shall be brought to, stored at removed from such depots;

(f) prohibit the closing up or obstructing of the channel banks of any river used for the transit of timber or other forest produce, and the throwing of grass, brushwood, branches or leave into any such river or any act which may cause such river to be closed or obstructed;

(g) provide for the prevention or removal of any obstruction of the channel or banks of any river, and for recovering the cost of such prevention or removal from the person whose acts or negligence necessitated the same;

(h) prohibit absolutely or subject to conditions within specified local limits, the establishments of sawpits, the converting, cutting, burning, concealing or marking of timber, the altering of effacing of any marks on the same or the possession or carrying of marking hammers or other implements used for marking timber;

(i) regulate the use of property marks for timber and the registration of such marks; prescribe the time for which such registration shall hold good; limit the number of such marks that may be registered by any one person, and provide for the levy of fees for such registration.

“42.Penalty for breach of rules made under section 41-

(1) Any person who contravenes the provisions of the rules made under section 41 of this Act shall be punishable with imprisonment for a term which may extend to six months or fine which may extend to twenty five thousand rupees or with both.

(2) In case where the offence under sub-section(1) is committed after sunset

and before sunrise or after preparation for resistance to lawful authority or where the offender has been previously convicted of a like offence the penalties shall be double of those mentioned in sub-section(1).”

Schedule - II of Code of Criminal Procedure, 1973

gives classification of offences qua other laws. The offence for which FIR has been registered is to be tried as non-cognizable offence.

Section 155(2) of the Code of Criminal Procedure reads as under -

“155. Information as to non-cognizable cases and investigation of such cases.-

(1). -----

(2). No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial.”

Thus, it is apparent that offence under Section 41/42 of the Rajasthan Forest Act, 1953 is non-cognizable offence and petitioner can only be prosecuted by filing a complaint by the authorised/competent Officer. The FIR in the present case, could not have been registered. The concerned Police Officer has not obtained permission from

the concerned Magistrate for investigation of the offence.

In view of the above, the proceedings initiated in pursuance of the impugned FIR cannot be sustained and are liable to be set aside.

Consequently, the present petition is accepted and the impugned FIR is quashed along with all subsequent proceedings.

However, liberty is granted to the competent authorised Officer to file a complaint in accordance with the provisions of law, if it is not barred by limitation.

Consequent upon acceptance of the main petition, the stay application filed therewith, also stands disposed of.

(MN BHANDARI),J

S.R. Kumawat, Jr. P.A.-133

All corrections made in the judgment/order have been incorporated in the judgment/order being emailed.

Seva Ram Kumawat

Jr.P.A.