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Court : Kerala

Decided On : Feb-11-2005

Reported in : 2005CriLJ4577; 2005(4)KLT339

Judge : K. Hema, J.

Acts : [Kerala Forest Act, 1961](#) - Sections 65, 73 and 74; Kerala Forest Subordinate Service Rules - Rule 4; [Code of Criminal Procedure \(CrPC\), 1973](#) - Sections 197, 197(1), 202 and 482; Indian Penal Code

Appeal No. : Crl.M.C. No. 8185 of 2001

Appellant : Pradeepkumar

Respondent : State of Kerala

Advocate for Def. : S. Radhakrishnan and; Thavamony, Public Prosecutor

Advocate for Pet/Ap. : S. Chandrasenan and; P.K. Somarajan, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

K. Hema, J.

1. No suit or criminal prosecution or other proceeding shall lie against any forest official for any act done or omitted or ordered to be done, in good faith, in pursuance of the Kerala Forest Act (for short, 'the Act'), as per Section 74 read with Section 73 of the Act. So, can the proceedings initiated against a forest official, a 'Ranger', in respect of a seizure made by him be quashed under Section 482 of the Code? Is a 'Ranger' entitled to benefit of Section 197 of the Code? These are the main questions to be decided in this case.

2. Brief facts of the case are as follows: Petitioner is the second accused in a case pending before a Magistrate's court. The second respondent/complainant filed complaint against him and other Forest Officials on the allegation that they took away certain timber logs of Anjili timber from the Wood Industries owned by complainant etc. All relevant documents evidencing lawful purchase of timber were produced by the complainant before the officers. But, ignoring such evidence, those articles were illegally taken away under the pretext of seizing such property under the Act. The accused did not prepare either any mahazar or even a seizure list. Forest officials including petitioner have thus, allegedly committed offence under Section 65 of the Act. The Magistrate's court, after conducting an enquiry under Section 202 of the Code, issued process against the petitioner.

3. According to learned Counsel for petitioner, petitioner effected the disputed seizure in good faith and in pursuance of the Act. Therefore, he cannot be prosecuted in view of the bar under Section 74 of the Act. It was also contended that the entire proceedings initiated against petitioner are per se illegal and hence liable to be quashed. To appreciate the above arguments, reading of Section 74 of the Act is essential. The said provision reads as follows:

'Section 74. Indemnity for act done in good faith:--No sutor criminal prosecution or other proceeding shall lie against any public servant for any act done or omitted or ordered to be done, in good faith, in pursuance of this Act'.

4. As per Section 74 of the Act, no criminal prosecution will lie against any public servant for any act done by him in good faith, in pursuance of the Act. A reading of Section 73 of the Act would show that all forest officials are public servants within the meaning of Indian Penal Code. Hence petitioner being a 'Ranger', working in

the Forest Department is a public servant covered by Section 74 of the Act. In the above circumstances, can the petitioner be prosecuted for the offence alleged in this case

5. Section 74 of the Act reveals that a forest official can claim protection only if two requirements are satisfied viz., 1) that the alleged act done or omitted or ordered to be done by the forest official was in pursuance of the Act, 2) that said act was done by him in good faith. The burden of proof of such factors is on the accused. It can be discharged either by adducing independent defence evidence or by relying upon other acceptable materials available before court. The degree of proof is on the scale of probability.

6. But, without establishing the requirements under Section 74 of the Act, accused cannot avail of benefit under the provision. This Court will not normally quash a complaint under Section 482 of the Code, unless it is prima facie revealed from the complaint and records produced along with the same or the admitted documents produced by accused that the act done by the accused was in pursuance of the Act and that it was done in 'good faith', as required under Section 74 of the Act. If it is satisfied from records that the complaint is a malicious, vexatious or ill-motivated one, this Court can certainly quash the complaint under Section 482 of the Code.

7. But, petitioner has not succeeded in establishing that this case falls under such category. As per the allegations in the complaint, petitioner was merely taking away certain articles from lawful possession of complainant without any authority, under the guise of a seizure. It is alleged that it was a mere mala fide removal of properties without any authority. None of the legal requirements or formalities under the Act were allegedly complied with by forest officials while acting under alleged pretext of a seizure. According to complainant, no case was also registered against complainant in connection with the seizure effected in this case to indicate any good faith.

8. Petitioner on the other hand would assert that a case was registered under the Act against complainant and to prove this fact, Annexures A1 and A2 were also produced by petitioner in these proceedings. But, those documents are neither admitted nor proved. It was also brought to my notice that the facts disclosed from

those documents and those revealed from the documents produced before trial court contradict each other, especially in respect to the registration of the case and other details of the case such as number of the crime etc. Learned Counsel for complainant also pointed out that a report was called for by trial court from Range Officer, Adimali regarding the case allegedly registered against petitioner. But, the affidavit filed by Range Officer was prima facie found to be false in this regard and hence court even initiated criminal proceeding against the Range Officer.

9. Thus it is evident that, parties are at variance in respect of even with the very nature of seizure effected in this case. The fact whether seizure was in pursuance of the Act or not itself is controversial. Therefore, to take a decision either way, a detailed consideration and a meticulous analysis of evidence are essential. Regarding plea of 'good faith' also, there is strong dispute. As per allegations in the complaint, forest officials including petitioner acted mala fide, in making the seizure. Thus, records placed before the Court will not prima facie, support the defence plea of 'good faith' also.

10. Any way this Court cannot resolve the intrinsic factual disputes in this proceedings. This case involves several disputed questions of facts. To resolve the factual disputes and to conclude the truth in the defence case or falsity in the prosecution case or vice versa, a scrupulous analysis of evidence, both oral as well as documentary and also appreciation of the same will be necessary. But this is not permitted under Section 482 of the Code. This Court can, at this stage, go only by the allegations made in the complaint and the documents produced along with it. It is well-settled that if the allegations made in the complaint and the records prima facie constitute an offence, this Court cannot quash a complaint or the proceedings under Section 482 of the Code of Criminal Procedure.

11. The Supreme Court in *Zandu Pharmaceutical Works Ltd. v. Sharaful Hague* (2004 (3) KIT 789 (SC) held as follows:

'At this stage this Court can only look into the allegations in the complaint and documents produced along with it. If those prima facie constitute the offence alleged, this Court cannot interfere under Section 482 Cr.P.C, The truth of the defence case or the falsity of the allegations in the complaint cannot be looked into

by this Court in these proceedings'.

12. It is also laid down by the Supreme Court that in a proceeding under Section 482 of the Code, this Court cannot rely upon the disputed documents produced in proceedings under Section 482 of the Code to find out the falsity of complaint. In a case in which one of the High Courts quashed a complaint, on the basis of a document produced by accused placing reliance upon the said document, the Supreme Court intervened and set aside the order of the High Court in *Chand Dhawan v. Jawaharlal* : 1992 CriLJ1956 holding thus:

'The truth or otherwise of the allegations in the complaint is a matter for proof. When the materials relied on by the respondent require to be proved, no inference can be drawn on the basis of those materials to conclude that the complaint is false'.

13. The allegations made in the complaint prima facie establish an offence against the petitioner. Documents were also produced by complainant to prove lawful possession of timber by the complainant. Village Certificate issued by Village Officer is also produced. Learned Counsel for complainant also submitted that stock register of the saw mill which is maintained in the ordinary course of business showing entries relating to lawful purchase of the timber seized are also available. In the above circumstances, trial court was justified in taking cognizance of offence against petitioner. Petitioner failed to establish prima facie that he is entitled to benefit under Section 74 of the Act. It is also not established that the complaint is a mala fide or frivolous one. Hence no interference is warranted under Section 482 of the Code.

14. Now, I shall deal with the other contention relating to protection under Section 197 of the Code. A reading of Section 197 of the Code shows that to apply Section 197 of the Code and to avail of the benefit under the section, the person who claims the benefit has to establish that he is a public servant not removable from his office save by or with the sanction of the Government. But, according to petitioner, he is a 'Ranger' working in the Forest Department. As per R.4 under the Kerala Forest Subordinate Service Rules, the appointing authority of Rangers and Deputy Rangers is the Chief Conservator of Forest. Petitioner can therefore be

removed from his office by the Chief Forest Conservator and no sanction from Government is necessary to do so. A 'Ranger' of Forest Department does not therefore fall under the category of public servants referred to in Section 197 of the Code and he cannot claim protection under the said section.

15. Learned Counsel for the petitioner however, cited decisions reported in *Rizwan Ahmed Javed Shaikh v. Jammal Patel* : 2001 CriLJ2897 and *Zutshi v. Bimal Debnath* (2004) 3 KLT 505 (SC)) to argue that the petitioner is entitled to the protection under Section 197(1) of the Code. But in those decisions the Supreme Court was dealing with the question whether acts committed by officers falling under Section 197 of the Code had any reasonable connection with discharge of official duty or not. In this case, petitioner is not an officer falling under Section 197 of the Code and hence those decisions have no application to the present case.

16. In the result, there is no ground to quash proceedings under Section 482 Cr.P.C. However, I make it clear that the trial court shall dispose of the case, untrammelled by any of the observations made in this order on merits.

This Petition is dismissed.

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