

ishwari Singh Vs. State of H.P.

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Court : Himachal Pradesh

Decided On : May-31-1994

Reported in : 1996CriLJ557

Judge : D.P. Sood, J.

Acts : Indian Penal Code (IPC) - Sections 34, 109, 120B, 218, 379, 420, 467 and 468; ;[Indian Forest Act, 1927](#) - Sections 33, 41 and 42; ;[Prevention of Corruption Act, 1988](#) - Sections 5(1), 5(1)(1) and 5(2); ;Code of Criminal Procedure (CrPC) , 1974 - Sections 155(2), 156(1), 161 and 482; ;[Constitution of India](#) - Article 226; ;Himachal Pradesh Forest Produce Transit (Land Routes), Rules, 1978 - Rule 5

Appeal No. : Cr. Rev. No. 99 of 1993 and Cri M.P.(M) No. 822 of 1993, Cri Misc Pet. (M) Nos. 783 and 902 of 1993

Appellant : ishwari Singh

Respondent : State of H.P.

Advocate for Def. : S.D. Vasudeva, Addl Adv. General

Advocate for Pet/Ap. : D.D. Sood, Adv.

Judgement :

ORDER

D.P. Sood, J.

1. All the four abovesaid petitions/ revision arise out of a criminal case registered pursuant to F. I. R. No. 10 of 1982 dated 23rd March, 1982 under Section 379, 420, 467, 468, 109, 34 and 120-B of the Indian Penal Code read with Sections 33, 41 and 42 of Indian Forest Act and under Sections 5(1) (d) and 5(2) of [Prevention of Corruption Act, 1988](#) lodged in the Police Station (Enforcement) South Zone, Shimla, As the facts pertaining to the alleged commission of offences by the petitioners accused are common, I proceed to decide them together by a common order.

2. The brief particulars of the abovesaid petitions may be stated as under :-

Sr. Nature of the Name of the Designation at the Charge

No. petition with accused. material time.

No.

1. 2. 3. 4. 5.

1. Cr. Rev. No. 99 1. Sh. Chet Ram. Forest Guards posted Section 120-B read with Sec-

of 1993. 2. Sh. Kali Ram. at Check Post, Khara tions 379 and 218 IPC as also

Pathar.

under Section 33 of the Indian

Forest Act; Rule 18 of the H.P.

3. Sh.Tarsem Chand. Forest Guards posted Forest Produce Transit (Land

4. Sh. Chandu Ram. at Check Post, Dhalli. Routes) Rules, 1978 read with

Sections 41 and 42 of Indian

Forest Act and Section 5(1)(d)

read with Section 5 (2) of the

Prevention of Corruption Act,

1988.

2. Cr. MP(M) Sh. Ishwari Singh. Sales Clerk in the Of- Sections 379, 420, 218, 467,

No. 783 of 1993. fice of Divisional For- 468, 109 and 120-B IPC as also

est Officer, Rohru. under Sections 33, 41 and 42 of

Indian Forest Act and under

Sections 5(1)(1)(d) and 5(2)

of Prevention of Corruption

Act, 1988.

3. Cr. MP(M) Ram Prakash Chau- Camp Clerk in the office Sections 379, 420, 218, 467,

No. 822 of 1993. han. of Divisional Forest 468, 109 and 120-B IPC as also

Officer, Rohru. under Sections 33, 41 and 42 of

Indian Forest Act and under

Sections 5(1)(d) and 5(2) of

Prevention of Corruption

Act, 1988.

4. Cr. MP(M) Sh. Bali Ram. Head Clerk in the of- Section 218 IPC.

No. 902 of 1993. fice of Divisional For-

est Officer, Rohru.

3. By the abovesaid petitions, all the petitioners have prayed for quashing the charges so framed against them in the abovesaid criminal proceedings arising out of the common F. I. R. referred to above.

4. The involvement of the petitioners in the aforesaid criminal proceedings is on the basis of the following facts:-

That M/s. Shiv Lal and Company had taken a contract of standing trees of the classification of Deodar, Kail and Rei contained in Khasra No. 19257 1530 etc. at Khersali Chak of private sales in the year 1976-77. They alongwith other persons and in connivance with the officials including the petitioners illicitly felled 649 trees worth Rs. 5,77,215.00 from the Govt. Forest, namely, OFF 72- A, UF-48 and UF 'Telga under the cover of felling trees from the private lands; that this timber was exported and sold by the accused (owners of the firms). 31 persons have been involved as parties to a criminal conspiracy in relation to the abovesaid illicit felling of trees.

5. As per the prosecution, firm M/s. Shiv Lal and Company belongs to Shri Jagdish Singh Thakur son of Thakur Ram Lal, a former Chief Minister. Himachal Pradesh, and Shri Mast Ram Tamta. It is then alleged that two permits Nos. 98/81-82 and 128/81 -82 were issued by the petitioners working in the office of the Divisional Forest Officer, Rohru pursuant to which the firm transported excess timber to the extent of 1694.51 eft. through the Forest Check Posts, Khara Pathar and Dhalli and smuggled 3618 scants in excess of the authorised limit through rail out of the State. It is further alleged that the firm sold the said timber to accused, Shri Bhupinder Singh, who in turn, smuggled the entire timber including the excess quantity out of the State, with the help of and in connivance with his father, Shri Amrit Singh, accused, the then Station Master, Summer Hill.

6. As per prosecution, two specification lists pertaining to timber were received by the office of the Divisional Forest Officer, Rohru and petitioners Ram Prakash, Camp Clerk, Ishwari Singh, Sales Clerk and Bali Ram, Head Clerk got two export permits Nos. 98/81-82 dated 23.7.1981 and 128/81-82 dated 5-10-1981 issued through the then Divisional Forest Officer. The first permit pertains to the export of 4991 scants of Kail (6689.21 eft.) and the second export permit pertains to 6897 'Nugs' (72 deodar, 5904 kail and 921 Rei) corresponding to 7539.46 eft. (154.56 eft. deodar, 5926.90 eft. kail and 1458 eft. rei). It is then alleged that copies of export permits alongwith the timber specification lists were duly endorsed to the Incharge Check Post, Khara Pathar, Dhalli, Dharampur and Parwanoo. 'Property mark' and 'khudan mark' were shown as 'MT' and 'SLJ' respectively in export permits. The case of the prosecution is that firm M/s. Shiv Lal and Company had not got their 'property mark' and 'khudan mark' registered with the office of Divisional Forest Officer, Rohru which was a condition precedent for the issuance of the permit as per Rule 5 of the H. P. Forest Produce Transit (Land Routes), Rules, 1978. It is also alleged that petitioners Bali Ram was the Head Clerk, Ram Prakash was Camp Clerk and Shri Ishwari Singh was the Sales Clerk, respectively in the-office of Divisional Forest Officer, Rohru at the material time. The prosecution case is that none of these officials pointed out the discrepancies with respect to the non-registration of the 'property mark' and 'khudan mark' of the aforesaid firm or the other discrepancies with respect to the quantity and volume of timber actually extracted as per the specification timber lists received by them before the issuance of the export permits.

7. The case against the Forest Guards deputed at the material time on the above said Check Post is that despite having received copies of the export permit and specification lists/timber lists showing the timber to be exported, none of the above officials working at the respective check post actually checked and examined the forest produce so transported nor maintained requisite registers as prescribed under the rules. As per statement of Shri Vijay Kishore. Deputy Ranger recorded under Section 161 of the Code of Criminal Procedure by the Investigating Agency, excess timber to the tune of 1694.51 eft. was allowed to be transported by the aforesaid officials through their respective check posts. Further case made out against them is that timber which did not find mention in the timber list was allowed

to be transported. Even the measurement of the timber allowed to be exported differed with that of the measurement mentioned in the permits issued to the firm aforesaid. Also their case is that these officials did not maintain the registers according to rules. Thus, the cumulative effect of all these acts of the officials concerned shows that they were in connivance with the owners of the firm. Thus, as per the case set out against the petitioners, they in connivance with the owners of the firm had allowed excess timber worth more than Rs. five lakhs exported through fraudulent means and thereby they caused undue pecuniary advantage to the firm as also others and caused loss to the Govt.

8. In the abovesaid petitions two categories of forest officials have been involved. The first one is that of Forest Guards who were posted at Check Post, Khara Pathar and Dhalli etc. at the material time and the second category is that of the officials doing the desk work in the office of Divisional Forest Officer, Rohru.

9. It would be proper to deal with the petitions category wise. Criminal Revision No. 99 of 1993 pertains to the case of Forest Guards and the other three Criminal Misc. (Main) Petitions filed by the petitioners under Section 482 of the Code of Criminal Procedure relate to the Second category of Clerks and Head Clerk working in the office of Divisional Forest Officer, Rohru.

10. I have heard S/Shri R.K. Bawa and D. D. Sood, Advocates appearing on behalf of the petitioners and Shri S.D. Vasudeva, learned Additional Advocate General representing the State of Himachal Pradesh. Learned counsels have also taken me through the entire record. I have also carefully examined the same minutely. Besides I have also considered the Himachal Pradesh Forest Manual for the purpose of apprising myself with respect to the rules.

11. Before I deal with the submissions of the learned counsels appearing on behalf of the parties to the instant lis, it would be relevant to detail that the basic principle emerging from the various decisions of the Apex Court is that the High Court cannot embark upon an enquiry as to whether the case is reliable or not. It is only where the allegations in the FIR or the complaint taken at their face value and accepted in their entirety does not constitute the offence alleged, the High Court is empowered to quash the proceedings. Some of the cases decided by the Apex

Court wherein said principles have been laid down are R.P. Kapur v. State of Punjab : 1960 CriLJ1239 . Delhi Development Authority v. Sardari Lal and the State, : AIR 1975 SC495 , State of Karnataka v. L. Muniswamy : 1977 CriLJ1125 , State of West Bengal v. Swapan Kumar Guha : 1982 CriLJ819 , Madhavrao Jiwaji Rao Scindia etc. v. Sambhijirao Chandrojirao Angre etc. : 1988 CriLJ853 , State of U.P. through C.B.I.S.P.E. Lucknow v. R.K. Srivastava : 1989 CriLJ2301 and State of Haryana v. Ch. Bhajan Lal : 1992 CriLJ527 .

11. Out of them, it would be material to lay down the main guidelines given in the case of Ch. Bhajan Lal (supra). In para 108 of this case, S. Ratnavel Pandian, J., speaking for the Court seven categories of cases by way of illustration where powers under Article 226 of the [Constitution of India](#) or the inherent powers under Section 482 of the Criminal Procedure Code can be exercised either to prevent the abuse of the process of any Court or to secure the ends of justice. On course, clearly pointing out that it may not be possible to lay down any precise, clearly definite and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised. The circumstances laid down are:

'1) Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

2) Where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4) Where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of

the Code.

5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

12. The guidelines laid down above have also been followed in various cases decided by the Division Bench of this Court, namely, Mohinder Lal v. State of HP (Cr. W. P. No. 22 of 1992) decided on 1-6-1993, V.K. Ahluwalia v. State of H.P. (CWP No. 94 of 1990) decided on 26-7-1993 and Smt. Pushpa Bhatnagar v. State of H.P. (Cr.W.P. No. 9 of 1993) decided on 11-10-1993.

13. Now, I proceed to consider the first category of cases, namely, that of Forest Guards in Criminal Revision Petition No. 99 of 1993 (Chet Ram and Ors. v. State of H.P.).

The Investigating Agency has collected the material in the shape of statement of Shri Bhadrul Mull, Forest Guard recorded under Section 161 of the Code of Criminal Procedure (Annexure-G) to the effect that Rawanas (Challanas) with respect to the timber were found to have been signed by the petitioners Chet Ram and Kali Ram. They have also collected the opinion of the Govt. Examiner of Questioned Documents to the same effect. As regards other Forest Guards, Tarsem Chand and Chandu Ram, their (there) exists material in the form of letter (Annexure-A) and letter No. 15292 dated 6-1-1984 which indicate that they also

remained posted at Check Post, Dhalli for the period 1 -7-1981 to 30-10-1981. Apart from it, there is material on record to show that the copies of the permits and timber/ specification lists were endorsed to the respective check posts to facilitate checking of the timber passing therefrom i.e. Check Post, Khara Phathar and Dhalli, respectively. Further the statement of Shri Vijay Kishore, Deputy Ranger recorded under Section 161 Cr. P. C. (Annexure-O) indicate that excess timber to the tune of 1694.51 eft. was allowed to be exported there being difference in between the measurement quantity of the export permit and that of the timber lists. According to him, round bailies in excess had also been allowed to be exported. Thus, from the allegations in the FIR and the material collected by the Investigating Agency taken at its face value as also prima facie accepted as such, does not support the claim of the petitioners (Forest Guards), namely, Chet Ram, Kali Ram, Chandu Ram and Tarsem Chand. The record does show the existence of some incriminating material prima facie against these accused in the commission of the alleged offences. In that view of the matter, their petition entails dismissal. The same is dismissed accordingly.

14. Now, I advert to the case of the forest officials working in the office of Divisional Forest Officer, Rohru. No doubt, the Investigating Agency has recorded the statement of Shri D. P. Sinha, Divisional Forest Officer, Rohru (Annexure-F), who states about the duties and functions of the Camp Clerk Sales Clerk and the Head Clerk yet positive material sufficient to make out even a prima facie case against these three petitioners is lacking in the instant case when seen in view of the guidelines laid down by the Apex Court. Even according to the case of the prosecution itself, the lists of timber prepared and certificate given by the field staff is the basis for the issuance of the export permit by the Divisional Forest Officer, though in accordance with the rules. In the instant case, admittedly such lists regarding felling and conversion of the timber from the standing trees purchased by the firm in private sale, was prepared by the field staff, that is to say, the Forest Guard, the Block Officer and the Ranger, who actually checked the converted timber and certified that the list as to whether the felling is proper and in order; that no trees had been illicitly felled and that such felling has been carried out by the Contractor in the area in which the permission to fell such trees has been granted to him and that timber sought to be exported bears the 'property mark' and

'Khudan Mark' of the contractor concerned. In the circumstances in the normal course, the officials working in the office of the Divisional Forest Officer cannot be deemed to be posted with the knowledge of illicit felling or that such timber was without 'property mark' or 'khudan mark' etc. unless a specific note is put on the lists so submitted to the office by the field staff. In fact, from the material collected by the Investigating Agency it appears that the field staff verifies not only the abovesaid facts, but also the volume of the timber felled, the quantity and volume of timber extracted and the size of each and every individual scant which is sought to be exported and regarding which export permit is applied for. The petitioners, namely, S/Shri Ishwar Singh, Ram Prakash and Bali Ram are alleged to have got two aforesaid export permits Nos. 98/81 -82 and T28/81 -82 issued to M/s. Shiv Lal and Company. Certified lists which form the basis of the issuance of the permits, indicate not only that the firm was a contractor, but they had also the registered 'property mark' and 'khudan mark.' The mere fact that khasra Nos. from which the timber was felled were not given in the lists, does not in any way enjoin a duty upon the officials working in the office to create hinderance in the issuance of export permit in the absence of any such objection raised by the field staff.

15. Viewing this fact from another angle, the fact as to whether the firm M/s. Shiv Lal & Company was or was not a registered contractor, should have been adjudged at the time they were given forest lease. The law enjoins a duty to lease out the forest to registered forest contractors only. In the instant case, the said firm had not only been given a contract, but the lessee had also felled and converted the forest produce in the shape of timber and round baulies etc. to the knowledge of everyone. They have been making use of 'Khudan mark and 'property mark' earlier too. The mere fact that these officials during their short tenure did not verify the registration of the 'property mark' or 'khudan mark' or that the firm was registered or was not registered particularly in view of the verification of these facts in the lists submitted to them, cannot be said to attribute/ label them with criminal intent of commission of an offence alleged against each one of them. Even otherwise it is absolutely impossible to ascertain in the office regarding the illicit felling and/or conversion carried out by any individual person because such factual position is required to be verified by the field staff. In the absence of any complaint to the contrary, these facts cannot be known to the officials working in the office. In

the instant case, the abovesaid officials have only put up a draft to apprise the Divisional Forest Officer of the facts regarding limber stated in the verified lists by the field staff for the purpose of issuance of export permit thereof. To my mind, applying the guidelines laid down by the Apex Court, the FIR coupled with the material collected by the Investigating Agency in respect of the involvement of the petitioners, even if be taken at its face value and accepted in its entirety, it does not prima facie constitute any offence or make out a case against anyone of these three petitioners. In that view of the matter, the three Criminal Misc. Petitions (Main) Nos. 783, 822 and 902 of 1993 entail acceptance.

16. In view of the discussion made above. Criminal Revision Petition No. 99 of 1993 is dismissed. However, other petitions i.e. Criminal Misc. Petitions (Main) Nos. 783, 822 and 902 of 1993 are allowed. Resultantly the prosecution of the petitioners Ishwari Singh, Ram Parkash and Bali Ram in the abovesaid three petitions are hereby quashed. Interim stay granted on 30-8-1993 staying the proceedings pursuant to FIR No. 10 of 1982 in the trial Court vide order passed in Cr. M. P. (M) No. 783 of 1993 Re: Ishwari Singh v. State of H.P. is vacated. It is made clear that the facts stated, material examined and findings and conclusions drawn are confined to the case of the petitioners only. The case of all other accused persons will be decided by the Court concerned on their own merits uninfluenced by any expression used or opinion expressed by this Court in the disposal of the abovesaid petitions. Copy of this order be retained in each connected file.