

STATE OF JAMMU AND KASHMIR

A

v.

ROMESH CHANDER AND ORS.

NOVEMBER 27, 1996

[K. RAMASWAMY AND G.T. NANAVATI, JJ.]

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*Jammu and Kashmir State Nationalisation of Forest Working Act, 1985:*

*Jammu and Kashmir Nationalisation of Forest Working Ordinance, 1986 :*

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*Jammu and Kashmir Nationalisation of Forest Working Act, 1987 :*

*Trial—Discharge of accused—Validity of—Lease granted to respondents for extraction of timber—FIR lodged against them for removal of timber from demarcated forest—Charge sheet—Discharge by Trial Court—On revision preferred by State High Court confirmed the discharge order—Appeal preferred by State—Held, the charge-sheet constitutes prima facie evidence constituting the offence for proceeding further in the matter—Court should look into the relevant law and the allegations made in the charge-sheet and then consider whether any offence has been committed to frame charges for trial before discharging the accused—Since the High Court has not done that the case is remitted to the High Court for disposal—High Court should reconsider the matter and dispose it of in accordance with law.*

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CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No. 2009 of 1996.

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From the Judgment and Order dated 23.4.92 of the Jammu & Kashmir High Court in CrI. R. No. 6 of 1992.

Jagdev Singh Manhas for the Appellant.

D.D. Thakur, G.A. Lone, P.H. Parekh, N.N. Bhatt, Ms. Bina Madhavan, Ranjit Kumar, Ms. Anu Mohla and Ms. Binu Tamta for the Respondents.

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The following Order of the Court was delivered :

Delay condoned.

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A Leave granted.

We have heard learned counsel on both sides.

B This appeal by special leave arises from the order of the High Court of Jammu and Kashmir, made on April 23, 1992 in Criminal Revision No. 6/92. The respondents 5 to 7, namely, Sudhir Kumar, Sharat Kumar and Davinder Kumar were granted lease to extract timber from compartment No. 55-56, Bani Range of Billawar Division. It is not in dispute that the lease of April 28, 1978 was to be effective upto December 31, 1986. It is stated by the respondents that for certain other purposes, it was extended upto December 31, 1987. We need not record any findings in that behalf. It is only noted as asked for. The Government have passed an order on February 22, 1985 directing the aforesaid three contractors to complete the extraction of the timber upto September 3, 1984 and thereafter unsalvaged timber would stand vested in the State. Admittedly, this is only an administrative order. On September 24, 1985, the Jammu and Kashmir State Nationalisation of Forest Working Act, 1985 was enacted. Thereunder, all timber lying within demarcated forests stood vested in the State w.e.f. the aforesaid date notwithstanding any lease or agreement subsisting as on the date. The Government order dated November 22, 1984 was stayed by the High Court on March 12, 1984 by an order in W.P. No. 48 of 1983 and C.M.P. No. 2120/84. When the respondents filed the Writ Petition No. 968/85 challenging the validity of the Act, the High Court passed an order as under :

F "The DFO Billawar is appointed as Commissioner who shall go to the launching sites in respect of the compartment No. 55-56 Basohli, Bani, Range Billawar Division and shall ensure that no timber is launched in the nallah after the passing of this order i.e. 13th of November 1985 by the petitioner. The DFO Billawar shall however not interfere with the timber already launched in the nallah. The said timber shall be permitted to be brought by the petitioner, through his labour at his own risk and cost and without prejudice to the rights of the parties upto the western bank of river Ravi, opposite to the collection point Shahpur Kandi located on the eastern bank of river Ravi within the State of J&K. The petitioner shall have the timber already launched in the nallah brought to the western bank of river Ravi, as noticed above, under the supervision

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of DFO/Billawar or his nominees. The petitioner shall have no right or lien over the timber so brought to the western bank of river Ravi. Save as may be decided subsequently by the Court on the disposal of the writ petition, the timber when brought to the western bank of river Ravi shall be stocked there against proper receipt and shall remain under the charge and control of the Forest Department and the petitioner shall not cause any interference in that regard. This may subsequently be varied or modified in that behalf by either of the parties after notice to the opposite party." A B

Thereafter, the Act came to be struck down by the High Court on December 13, 1985. The Jammu and Kashmir Nationalisation of Forest Working Ordinance No. 5 of 1986 was passed on January 31, 1986 with retrospective effect from September 24, 1985. It would appear that the Ordinance lapsed and subsequently another Ordinance was issued on December 16, 1986 which was replaced by the Jammu and Kashmir Nationalisation of Forest Working Act, 1987 which came into effect from April 21, 1987 with retrospective effect from September 24, 1985. Since the Ordinance 5 of 1986 was given effect from September 24, 1985. C D

Section 3(a) of the Ordinance 5 of 1986 envisages that "notwithstanding anything to the contrary contained in any law, rule instrument, agreement or contract or in any judgment, decree or order of any Court or Authority as from the commencement of this Ordinance, no person shall fell any tree or convert any timber or carry on the felling of any tree or conversion or removal of any timber in any demarcated forest of the State ...". Section 9 prescribes penalty and states that "any person who contravenes the provisions of this Ordinance or abets the contravention thereof, shall be punishable with imprisonment for a term which may extend to five years but shall not be less than three years." The appellant filed an FIR alleging therein certain accusations against four named officers and also the respondents lessees. After conducting the investigation the charge sheet was filed by the police against seven persons including the aforesaid three lessee-respondents for several offences and also the four officers for offences including conspiracy in permitting lessee-respondents to remove the timber from the demarcated forest etc. the details of which we are not mentioning for the reason that we are not disposing of the matter on merits at this stage. The trial Judge discharged all the accused. On filing of a revision, the High Court in the impugned order confirmed the same. Thus, E F G H

A this appeal by special leave.

Shri Manhas, learned counsel appearing for the State, contends that the trial Court and the High Court were not right in discharging the accused. It is necessary to mention that D.F.O., Khojaria and Chowdhary Girdhari Lal have died. Therefore, the prosecution against them stands abated. The question is : whether *prima facie* case has been made out against the respondents? Shri D.D. Thakur, learned senior counsel appearing for respondents 5 to 7, the lessees, contends that they did not commit any offence and they do not come under the provisions of either the Ordinance 5 of 1986 or the Act which was quashed by the High Court or the Act No. 7 of 1987. Therefore, no case has been made out against them. As stated earlier, we decline to consider the matter on merits for the reason that the High Court should have considered all the relevant provisions of the Act and offences and the contentions of the parties taking into consideration the averments made in the charge-sheet. It is now settled law that the charge-sheet constitutes *prima facie* evidence constituting the offence for proceeding further in the matter. Necessarily, therefore, the Court has to look into the relevant law and the allegations made in the charge-sheet and then consider whether any offence has been committed to frame charges for trial before discharging the accused. Since the High Court has not done that, we think it proper that the High Court should reconsider the matter and dispose it of in accordance with law. All the contentions raised by the learned counsel on either side are left open. It is open to the counsel to argue the matter in the High Court.

The appeal is accordingly allowed and the case is remitted to the High Court for disposal. Since it is an old case, we would request the High Court to dispose it of as expeditiously as possible within three months from the date of the receipt of this Order.

T.N.A.

Appeal allowed.