

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.7239 of 2013

Arising Out of PS.Case No. -6 Year- 2003 Thana -GOVERNMENT OFFICIAL COMP. District- -

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1. Arun Kumar Sharma S/O Ram Narayan Sharma Resident Of Village-
Bela, P.S.- Goh, District- Aurangabad

.... Petitioner/s

Versus

1. The State Of Bihar
2. The Forester, Goh, District- Aurangabad

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Binay Mistri, Advocate.

For the Opposite Party/s : Mr. Chandra Bhushan Prasad(App)

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
ORAL ORDER

5 06-05-2015

Heard.

The petition seeks the quashing of order of summoning and cognizance dated 22.09.2010 by which the petitioner was directed to appear and take the trial for committing the offence under Section 5 of the Indian Forest Act.

The challenge to the order has been set up on the ground that a forester was not the competent authority to make search and seizure of any authorized article or any vehicle, vessel, container etc. which could be used in carrying or storing the forest produce. In support of the contention, a decision of this Court passed in CWJC No.11206 of 2005 was placed on record as Annexure-2. It has been held by Court deciding the above noted writ petition that no notification was in effect authorizing a forester to enter into any

premises for search or for the purposes of seizing anything which could be relatable to the commission of a forest offence.

Considering the decision of the Court in the above noted writ petition and in the light of the submission, the Court had directed the learned counsel for the forest department to appraise it of any contrary notification. What I find is that that situation remains unaltered as there is no notification issued empowering a forester to make search or seizure on suspicion of commission of any forest offence.

While perusing the impugned order of summoning what appeared to me was that the learned Sub Divisional Judicial Magistrate, Daudnagar, Aurangabad, was holding that the petitioner appeared to have committed an offence under Section 5 of the Forest Act. Incidentally, there was no offence defined or made punishable under Section 5 of the Forest Act and what appears further is that the prosecution report was lodged for the violation of the provisions of Section 8 of the Bihar Saw Mill(Regulation) Act, 1990. On perusal further of the Bihar Saw Mill (Regulation) Act, what appears is that for violating the provisions of that particular act, the offence has been defined and made punishable under Section 14 of the said Act. Thus, what appears to me is that the order of cognizance was passed without

due application of judicial mind by the learned Sub Divisional Judicial Magistrate, Daudnagar, Aurangabad in the most mechanical manner without even consulting the provision of law as to which provision could be attracted under the facts of the case.

Regard being had to the two reasons noted above, the whole prosecution initiated in Forest Case No.06 of 2003, Trial No.859 of 2012 pending before the Sub Divisional Judicial Magistrate, Daudnagar, Aurangabad is hereby quashed. Petition is allowed.

(Dharnidhar Jha, J)

B.Kr./-

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