

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.23929 of 2015

Arising Out of PS.Case No. -1 Year- 2014 Thana -GOVERNMENT OFFICIAL COMP. District-
AURANGABAD

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1. Abhimanyu Mistri @ Abhimanyu Sharma son of Late Bandhu Sharma @
Bandhu Mistri resident of village - Bhalawandih, P.S. Goh, District -
Aurangabad.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Forester, Madanpur Range, Madanpur, District - Aurangabad.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vinay Mistry
For the Opposite Party/s : Mr. L.K.Sharma(App)

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 18-09-2015 Heard Mr. Vinay Mistry, learned counsel for the

petitioner and Mr. L.K. Sharma, learned Additional Public

Prosecutor for the State.

2. The present application under section 482 of the Code
of Criminal Procedure (for short “Cr.P.C.”) has been filed for
quashing the order dated 25.01.2014 passed by the learned Sub
Divisional Judicial Magistrate, Daudnagar, Aurangabad in
connection with Forest Case No. 1 of 2014 whereby the petitioner
has been summoned to face trial for the offences punishable under
Section 5 of the Bihar Saw Mills (Regulation) Act, 1990 and
Sections 41 and 42 of the Indian Forest Act, 1927.

3. In course of argument, a pointed question of law has

been raised by the learned counsel for the petitioner that the Forester, who had effected search and seizure, was not authorized under the law to conduct search and seizure. Hence, the consequential proceedings before the learned Sub Divisional Judicial, Daudnagar were without jurisdiction.

4. In support of his submission, learned counsel for the petitioner has placed reliance on the unreported decisions of this Court vide order dated **06.05.2015** passed in **Cr.Misc. No. 7239 of 2013**, order dated **04.07.2012** passed in **C.W.J.C. No. 11206 of 2005** and order **16.04.2013** passed in **C.W.J.C. No. 4682 of 2013**.

5. Learned counsel for the State has contested the matter. He has tried to defend the case but has failed to point out any provision of law or any Government notification before this Court authorizing the Forester to effect search and seizure under the Act.

6. The issue raised by the learned counsel for the petitioner was noticed in the order dated **06.05.2015** passed in **Cr.Misc. No.7239 of 2013** wherein the prayer for quashing of the order of cognizance and summoning in connection with Forest Case No.06 of 2003 was allowed by a Bench of this Court. In the order dated 06.05.2015, noticing a similar argument advanced by the petitioner, this Court observed as under :-



“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.”

7. In the order dated **04.07.2012** passed in **C.W.J.C. No.11206 of 2005**, a Bench of this Court considered the legality of search and seizure conducted by a Forester. In that case, after hearing the parties, the Court observed as under :-

“The contention of the counsel for the State cannot be appreciated for the simple reason that the writ application has remained pending for adjudication for seven years and no steps have been taken despite indulgence shown on several occasions to file counter affidavit. If they have not bothered to bring any material to show that Annexure-1 is not the document by which search and seizure was made, then search and seizure carried out

by the Forester is illegal, unjustified and in breach of section 8 of the Act. Writ is allowed. Annexure-1 is quashed. Respondents are directed to return of the seized materials to the petitioner forthwith, preferably, within a period of four weeks from the date of production of a copy of this order.”

8. I further find that in the order dated **16.04.2013** passed in **C.W.J.C. No. 4682 of 2013** an identical issue was raised and after hearing the parties, a Bench of this Court held that the search and seizure effected by the respondents and consequential proceedings pending before the Divisional Forest Officer, Aurangabad in connection with the case were quashed.

8. Regard being had to the legal position that there is no notification issued empowering a Forester to make search and seizure on suspicion of commission of any forest offence and the orders passed by different Benches of this Court, the whole proceeding in connection with Forest Case No. 1 of 2014 pending before the learned Sub Divisional Judicial Magistrate, Daudnagar, Aurangabad is hereby quashed.

9. The application stands allowed.

(Ashwani Kumar Singh, J)

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