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IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37692 of 2015

Arising Out of PS.Case No. -1 Year- 2013 Thana -GOVERNMENT OFFICIAL COMP. District-AURANGABAD

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1. Satrudhan Mistri son of late Baleshwar Mistri, resident of village - Tilauti, P.S. Haspura, District - Aurangabad
2. Shyam Nandan Mistri @ Shyam Nandan Prasad Sharma, son of late Baleshwar Mistri, resident of village - Tilauti, P.S. Haspura, District - Aurangabad

.... Petitioners

Versus

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

.... Opposite Parties.

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Appearance :
For the Petitioner/s : Mr. Vinay Mistry, Advocate
For the Opposite Party/s : Dr. Mayanand Jha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT
Date: 08-04-2016

Heard Mr. Vinay Mistry, learned counsel for the petitioners and Dr. Mayanand Jha, learned Additional Public Prosecutor for the State.

2. By way of the present application preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short "CrPC"), the petitioners have sought for quashing of the order dated 08.06.2013 passed by the learned Sub-Divisional Judicial Magistrate, Daudnagar, Aurangabad in Forest Case No. 1 of 2013, whereby finding a *prima facie* case to be made out for the offences

punishable under Sections 33, 41 and 42 of the Indian Forest Act, 1927 (for short "the Forest Act") cognizance has been taken and the petitioners have been summoned to face trial.

3. The prosecution report discloses about an occurrence which is said to have taken place on 02.01.2010. It has been stated in the report submitted by one Dhanik Paswan, a Forester, Goh-Haspura before the learned SDJM, Daudnagar that four trees of *Sisam* were cut down and removed from Pachrukhiya raod. On inquiry, it transpired from the villagers that the culprits including the petitioners carried the timber by tractor and sold them.

4. On the basis of said prosecution report submitted by the aforesaid Dhanik Paswan, cognizance was taken under Sections 33, 41 and 42 of the Forest Act by the learned SDJM, Daudnagar vide impugned order dated 08.06.2013.

5. It has been contended by the learned counsel for the petitioners that the order taking cognizance of the offence is barred by law of limitation as prescribed under Section 468(2)(c) for the reason that the maximum punishment provided under Sections 33, 41 and 42 of the Forest Act is two years. It has been further submitted that the prosecution report itself would indicate that with regard to the present occurrence an information was

submitted by one Suresh Rajak, a Forest Guard to the Forester, Dhanik Paswan on 02.01.2010 for institution of the case and thereafter, the Forester submitted the prosecution report before the Sub-Divisional Judicial Magistrate on 05.06.2013 pursuant to which cognizance has been taken after lapse of three years and four months from the date of commission of the offence which is not permissible in law.

6. *Per contra*, learned counsel for the State has submitted that Section 473 of the CrPC provides that if any Court is satisfied on the facts and in the circumstances of the case that it is necessary so to do in the interest of justice, it may take cognizance of the offence even after expiry of the period of limitation. He has also submitted that in view of the statutory provisions under Section 473 of the CrPC, the impugned order passed by the learned Sub-Divisional Judicial Magistrate cannot be held to be bad in law. He has submitted that the cognizance has been taken in the present case on the date of filing the complaint itself and hence the same cannot be treated to be barred by the law of limitation.

7. I have heard learned counsel for the parties and perused the materials on record.

8. To understand the scheme of Chapter XXXVI it would be advantageous to quote Sections 467 to 473 of the CrPC.

They read as under:-

> ***"467. Definitions*** *— For the purposes of this Chapter, unless the context otherwise, requires, "period of limitation" means the period specified in section 468 for taking cognizance of an offence.*
>
> ***468. Bar to taking cognizance after lapse of the period of limitation.*** *(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.*
>
> *(2) The period of limitation shall be—*
>
> *(a) six months, if the offence is punishable with fine only;*
>
> *(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;*
>
> *(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.*
>
> *(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.*
>
> ***469. Commencement of the period of limitation.-*** *(1) The period of limitation, in relation to an offence, shall commence,—*
>
> *(a) on the date of the offence; or*

(b) where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of such person or to any police officer, whichever is earlier; or

(c) where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making investigation into the offence, whichever is earlier.

(2) In computing the said period, the day from which such period is to be computed shall be excluded.

470. Exclusion of time in certain cases.

(1) In computing the period of limitation, the time during which any person has been prosecuting with due diligence another prosecution, whether in a Court of first instance or in a Court of appeal or revision, against the offender, shall be excluded:

Provided that no such exclusion shall be made unless the prosecution relates to the same facts and is prosecuted in good faith in a Court which from defect of jurisdiction or other cause of a like nature, is unable to entertain it.

(2) Where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued

or made, and the day on which it was withdrawn, shall be excluded.

(3) Where notice of prosecution for an offence has been given, or where, under any law for the time being in force, the previous consent or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, than, in computing the period of limitation, the period of such notice or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.—In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded.

(4) In computing the period of limitation, the time during which the offender—

(a) has been absent from the India or from any territory outside India which is under the administration of the Central Government, or

(b) has avoided arrest by absconding or concealing himself, shall be excluded.

471. Exclusion of date on which Court is closed.- *Where the period of limitation expires on a day when the Court is closed, the Court may take cognizance on the day on which the Court reopens.*

Explanation.—A Court shall be deemed to be closed on any day within the meaning of this section, if, during its normal working hours, it remains closed on that day.

472. Continuing offence.- *In the case of a continuing offence, a fresh period of limitation shall begin to run at every moment of the time during which the offence continues.*

473. Extension of period of limitation in certain cases.- *Notwithstanding anything contained in the foregoing provisions of this Chapter, any Court may take cognizance of an offence after the expiry of the period of limitation, if it is satisfied on the facts and in the circumstances of the case that the delay has been properly explained or that it is necessary so to do in the interests of justice."*

9. Section 467 of the CrPC defines the expression 'period of limitation' as the period specified in Section 468 of the CrPC for taking cognizance of an offence. Section 469 of the CrPC fixes the day from which limitation laid down under Section 468 should begin to run. Section 470 of the CrPC lays down certain period to be excluded while computing the period of limitation. Section 471 of the CrPC makes provision for exclusion of date on which court is closed in computing period of limitation. Section 472 of the CrPC prescribes that in the case of continuing offence, a

fresh period of limitation shall begin to run at every moment of the time during which the offence continues. Section 473 of the CrPC, however, lays down two exceptions under which the court can take cognizance of an offence even beyond the period fixed by Section 468(2) of the CrPC. They are :- (1) if proper and satisfactory explanation of the delay is forthcoming or (2) it is in the interest of justice.

10. Taking note of various aspects the Parliament has classified the offences into two categories, having regard to the gravity of the offence, on the basis of punishment prescribed for them. Grave offences for which punishment prescribed is imprisonment for a term exceeding three years are not brought within the ambit of Chapter XXXVI. The period of limitation is prescribed only for the offences for which punishment specified is imprisonment for a term not exceeding three years. In such case also wide discretion is given to the court in the matter of taking cognizance of offence after expiry of the period of limitation.

11. A perusal of Section 468 (2)(c) of the CrPC would make it evident that the Court would be debarred from taking cognizance of the offence after expiry of three years if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

12. The Forest Act is a central enactment being a legislation pertaining to an entry in the concurrent list. The State of Bihar has chosen to amend the said act in its application to the State of Bihar by the Bihar Amendment Act of 1990 which came into force on 10.09.1990 by introducing enhanced sentence by way of punishment for contravention of different offences under the Forest Act.

13. Section 33 of the Indian Forest (Bihar Amendment) Act, prescribes punishment of imprisonment for a minimum term of six months which may extend to two years or with minimum fine of one thousand rupees which may extend to five thousand rupees or both.

14. Section 41 of the Forest Act gives power to the State to make rules to regulate transit of forest produce whereas Section 42 prescribes punishment for breach of rules made under Section 41.

15. Section 42 of the Indian Forest (Bihar Amendment) Act, 1990 reads as under :-

> ***"42. Penalty for breach of rules made under section 41.*** *– The State Government may be such rules prescribe as penalties for the contravention thereof imprisonment for a minimum term of six months which may extend to two years or with*

minimum fine of one thousand rupees which may extend to five thousand rupees or with both. The offence under this section shall be cognizable and non bailable."

16. A perusal of penal provisions prescribed under Sections 33 and 42 of the Indian Forest (Bihar Amendment) Act, 1990 would make it evident that if any person is guilty of any offence mentioned above he shall be punished with imprisonment which may extend to two years or with fine or with both.

17. Hence, in view of the mandatory provision prescribed under Section 468(2)(c) and Section 469 of the CrPC, the cognizance of the offence ought to have been taken by the learned Sub-Divisional Judicial Magistrate within three years from the date of knowledge about the commission of the offence. From the prosecution report itself it would appear that the alleged occurrence of cutting down and removing the trees took place on 02.01.2010 and the knowledge about the occurrence also came to the notice of Forest Guard on the same day. However, the prosecution report was filed in the court after lapse of more than three years on 05.06.2013. Thus, in view of the provisions prescribed under Section 468 of the CrPC, the impugned order is hopelessly barred by law of limitation.

18. It is true that Section 473 of the CrPC gives discretion to the court to take cognizance after expiry of the period of limitation. However, such discretion has to be exercised by the court in the interest of justice in the facts and circumstances of the case, if the delay is properly explained. In the present case, no application was filed on behalf of the prosecution for condoning the delay. From perusal of the impugned order it would also appear that the learned Sub-Divisional Judicial Magistrate has also not assigned any reason for condoning the delay. He has not even recorded in his order that the condonation of delay would be in the interest of justice.

19. Keeping in mind the provisions prescribed under Chapter XXXVI of the CrPC, this Court is of the opinion that the impugned order dated 08.06.2013 passed by learned Sub-Divisional Judicial Magistrate, Daudnagar, Aurangabad in Forest Case No 1 of 2013 cannot be sustained.

20. Accordingly, it is set aside.

21. The application stands allowed.

(Ashwani Kumar Singh, J.)

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