

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.49833 of 2013

Arising Out of PS.Case No. -233 Year- 2012 Thana -BIDUPUR District- VAISHALI(HAJIPUR)

- =====
1. Ram Padarath Sharma Son of Late Jailal Sharma Resident of Village-
Daudpur, P.S.- Bidupur, District- Vaishali
 2. Sudhir Sharma Son of Ram Padarath Sharma Resident of Village-
Daudpur, P.S.- Bidupur, District- Vaishali

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar, Advocate

For the Opposite Party/s : Mr. Anant Kumar(APP)

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

Date: 23-05-2017

Heard learned counsel for the petitioners and the
learned A.P.P. for the State.

2. Petitioner has filed this application under Section
482 of the Code of Criminal Procedure for quashing of the order
dated 29.04.2013 passed by the learned Chief Judicial Magistrate,
Vaishali at Hajipur in Bidupur P.S. Case No. 233 of 2012, Gr. No.
4002 of 2012/Tr. No. 3262 of 2013 whereby the learned
Magistrate while issuing the process after receiving Charge-sheet
No. 62 of 2013 dated 31.03.2013, took cognizance against the
petitioners under Section 414 of the Indian Penal Code and
Section 33 of the Indian Forest Act, 1927 (hereinafter referred to
as the Act).

3. The prosecution case is based on the written
report of the Circle Officer, Bidupur dated 27.09.2012, who on the



basis of complaint made by the local people, including one Braj Kishore Singh of village Khilwat about illegal cutting of trees, raided the saw mill of the petitioners and reached M/s Amar Nath Saw Mill situated at Bidupur Bazar and saw petitioner no.2, Sudhir Sharma, who reported that petitioner no.1, Ram Padarath Sharma is the owner of the saw mill. The Circle Officer found huge quantity of timber lying in the saw mill and when asked to produce the licence, both the petitioners fled away. Thereafter, saw mill of the petitioners was seized.

4. It has been submitted by the learned counsel for the petitioners that they are innocent and the saw mill belongs to one Amar Nath Sharma, who has sworn an affidavit that petitioner no.1 is his Manager and petitioner no.2 is the son of petitioner no.1 and has transferred the ownership of the saw mill to petitioner no.1. Petitioners have challenged the seizure of the saw mill by the Circle Officer stating therein that as per Section 52 of the Act, the Circle Officer has acted illegally and beyond his jurisdiction to conduct such search and seizure. He submits that seizure can only be made by a Forest Officer or Police Officer and as per sub-sections (1) and (2) of Section 52 of the Act, the seized property should be forwarded to the officer not below the rank of the Divisional Forest Officer or a designated authorized officer, which report should be forwarded to the Magistrate having



jurisdiction of trying the offence on account of such seizure. He further refers to sub-section (3) of Section 52 which indicates that a copy of order of confiscation has to be forwarded without undue delay to the Conservators of Forest and as per sub-clause (b) of sub-section 4, a notice has to be issued in writing to the person from whom the property is seized and sub-clause (c) of sub-section (4) postulates that opportunity of hearing to the said persons from whom property has been seized should be granted. He submits that no such procedure as envisaged under Section 52 of the Act has been followed and a rank outsider being Circle Officer has conducted the raid and seized the timber lying in the saw mill. He further submits that Section 33 of the Act is not applicable as when the First Information Report itself is lodged by an authority not competent to lodge the same, no question of penalty under Section 33 of the Act will arise. He further submits that Section 414 of the Indian Penal Code is also not applicable as the Circle Officer had no jurisdiction to conduct the raid as under the Act, the Forest Officer or the Police Officer is competent to carry on the raid and the fact that the saw mill had a valid licence for the period in question as the date of seizure is 27.09.2012 and as per Annexure-2, saw mill had a valid licence for the period 01.01.2012 to 31.12.2012.

5. On the other hand, learned counsel for the State



submits that even if the Circle Officer was not authorized under the Act to conduct such search and seize the saw mill in question, yet an invalid investigation will not nullify the cognizance or trial based thereon.

6. Having heard the parties and having gone through the Full Bench Judgment in the case of **Bijay Krishna Sahay vs. The State of Bihar & Ors.**, since reported in **1998 (3) PLJR 429**, it appears that their Lordships have taken into consideration the case where seizure and the procedure adopted was not legal, yet what has been observed is as follows:

“12. The Authorised Officer under sub-section (3) of Section 52 (reproduced hereinabove) initiates confiscation proceedings upon production before him of property seized or upon receipt of report about the seizure, as the case may be, but he can confiscate such property only if he “is satisfied that a forest offence has been committed in respect thereof”. This section permits confiscation of seized property only if it is proved on the basis of relevant evidence/ material that the forest offence has been committed in respect thereof. The illegality of search and seizure will have no bearing on the confiscation proceedings and the order passed therein. The same is the position with regard to the criminal



case instituted in the criminal court on the basis of the report about the seized property. Both the Authorized Officer and the Criminal Court get jurisdiction upon the production of the seized property or upon receipt of the report in respect thereof. They are not concerned with the legality or illegality of the search and seizure. Valid seizure is neither the foundation of the jurisdiction of the Authorised Officer to confiscate the seized property, nor is it a condition precedent for taking cognizance of forest offence by the court. In this connection, reference may be made to **H.N. Rishbud & Ano. Vs. State of Delhi** (AIR 1955 SC 196) wherein the Apex Court has held that the police report on the basis of which cognizance is taken under section 190 Cr.P.C. need not be a valid and legal report. The relevant extracts of the said decision of the Apex Court are reproduced below:-

“(9) The question then requires to be considered whether and to what extent the trial which follows such investigation is vitiated. Now, trial follows cognizance and cognizance is preceded by investigation. This is undoubtedly the basic scheme of the Code in respect of cognizable



cases. But it does not necessarily follow that an invalid investigation nullifies the cognizance or trial based thereon.

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“A defect or illegality in investigation, however, serious, has no direct bearing on the competence or the procedure relating to cognizance or trial. No doubt a police report which results from an investigation is provided in Section 190 Cr.P.C. as the material on which cognizance is taken. But it can not be maintained that a valid and legal police report is the foundation of the jurisdiction of the Court to take cognizance ...”

The Supreme Court also held that taking of cognizance on the basis of the invalid police report “is only in the nature of error in a proceeding antecedent to the trial” and to such a situation, section 537, Cr.P.C. (old) is attracted. It was accordingly laid down as under-

“If, therefore, cognizance is in fact taken on a police report vitiated by the breach of a mandatory provision relating to investigation, there can be no doubt that the result of the trial



which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a miscarriage of justice. That an illegality committed in the course of investigation does not affect the competence and the jurisdiction of the Court for trial is well settled as appears from cases in – ‘Prabhu v. Emperor’ AIR 1944 PC 73 (C) and - “ Lumbhardar Zutshi” v. The King’, AIR 1950 PC 26(D).

These no doubt relate to the illegality of arrest in the course of investigation while we are concerned in the present cases with the illegality with reference to the machinery for the Collection of the evidence. This distinction may have a bearing on the question of prejudice or miscarriage of justice, but both the cases clearly show that invalidity of the investigation has no relation to the competence of the Court. We are, therefore, clearly also of the opinion that where the cognizance of the case has in fact been taken and the case has proceeded to termination, the invalidity of the precedent investigation does not vitiate the result, unless miscarriage of justice has been caused thereby.”

13. Neither the criminal case will fail, nor the confiscation proceeding will become not maintainable, even if the search and seizure are



ultimately found to be illegal, provided commission of forest offence has been proved on the basis of relevant evidence/ material. The source from which such evidence / material has been obtained is also not relevant. The relevant evidence/ material cannot be excluded from evidence even if it was obtained on illegal search and seizure. In **Pooran Mal vs. Director of Inspection (Investigation), Income Tax**, (AIR 1974 SC 348), the Supreme Court, in this connection, has laid down as follows:

“ It, therefore, follows that neither by invoking the spirit of our Constitution nor by a strained construction of any of the fundamental rights can we spell out the exclusion of evidence obtained on an illegal search.

So far as India is concerned, its law of evidence is modelled on the rules of evidence which prevailed in English law, and courts in India and in England have consistently refused to exclude evidence merely on the ground that it is obtained by illegal search or seizure....”

“ ...It would thus be seen that in India, as in England, where the test of admissibility of evidence lies in relevancy, unless there is an express or necessarily implied prohibition in the



Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out ...”

“In that view, even assuming, as was done by the High Court that the search and seizure were in contravention of the provisions of Section 132 of the Income Tax Act, still the material seized was liable to be used subject to law before the Income-tax authorities against the person from whose custody it was seized and, therefore, no writ of Prohibition in restraint of such use could be granted”

Supreme Court in **Kishan vs. State of Uttar Pradesh** (AIR 1963 SC 822), the relevant extracts of which are quoted below, has held that illegal search does not vitiate the seizure of property:-

“...So far as the alleged illegality of the search is concerned it is sufficient to say that even assuming that the search was illegal the seizure of the articles is not vitiated. It may be that where the provisions of Ss. 103 and 165, Code of Criminal Procedure are contravened the search could be resisted by the person whose premises are sought to be searched. It may also be that because of the illegality of the search the Court may be



inclined to examine carefully the evidence regarding the seizure. But beyond these two consequences no further consequence ensues.....”

14. The Authorised Officer can take into account the relevant evidence/material even if obtained on illegal search and seizure after giving reasonable opportunity of being heard in respect thereof to the persons whose property is sought to be confiscated. Same will be the position with regard to the criminal proceeding initiated in respect of the forest offence.

15. Our answer to the questions referred to are as follows:

(i) Under section 52, a Forester can seize forest produce together with tools, arms, boats, vehicles, chains or any other articles used in committing a forest offence if he has reason to believe that such an offence has been committed in respect of any forest produce. But he cannot exercise any such power under section 52-D whereunder only a Forest Officer not below the rank of Range Officer and a Police Officer not below the rank of Sub-Inspector can make seizure.

(ii) Illegality of the search and seizure will have no bearing on the confiscation proceedings and the criminal case. Neither the criminal case will fail, nor would the confiscation proceedings become not maintainable, even if search and



seizure are illegal.”

7. Thus, from the submission made by the parties, it is evident that illegality of search and seizure will have no bearing on the criminal case neither the criminal case will fail nor would it become not maintainable even if search and seizure are illegal since on the basis of the materials collected during investigation, charge-sheet has already been submitted. Hence, in the facts and circumstances, no relief can be granted.

8. This application is, accordingly, dismissed.

(Nilu Agrawal, J.)

Arjun/-

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