

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.989 of 2016

Arising Out of PS. Case No.-5 Year-2008 Thana- DESARI District- Vaishali

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1. Baliram Jha @ Balram Jha S/o Late Narmdeshwar Jha.
 2. Sunil Jha @ Sunil Kumar Jha @ Sunil Kumar S/o Late Umeshwar Jha @ Umesh Jha Both resident of village-Chainpur Baghel, P.S.- Desari (Sahadai O.P.) District- Vaishali.
 3. Krishna Kant Jha S/o Late Pyarelal Jha, resident of Village-Vikrampur, P.S.- Desari (Sahadai O.P.) District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar
 2. Sri Mahesh Prasad, Forest Range officer, Hajipur Range, Vaishali
- Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Mahesh Naraya Parbat Sr. Advocate
For the State	:	Mr. U.L.Verma (App)
For the O.P.No.2:	:	Mr. Anirudh Kumar, Advocate)

CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT

Date : 18-09-2018

This petition under Section 482 Cr. P.C. has been filed for quashing the order dated 17.6.15 passed by the learned JM 1st Class Hajipur (Vaishali) in Desari (Sahadai O.P.). P.S. case no. 5/2008 by which learned Magistrate has taken cognizance for the offence under Sections 379, 411 of the IPC and Section 33 of the Indian Forest Act, 1927 against the petitioners and others.

Heard learned counsel for the petitioners and learned counsel for the opposite party no.2.

Learned counsel for the petitioners has submitted that the impugned order is bad in law because the cognizance has been taken after expiry of the period as required under section



468 Cr. P.C.

A supplementary affidavit has been filed on behalf of the petitioners stating therein in para 3 that date of occurrence is 28.12.2007. The F.I.R. was lodged on 8.1.2008. The final form/Report was submitted on 29.2.2008. The cognizance was taken on 17.6.15.

From the impugned order, it appears that the learned court below has taken cognizance for the offence under Sections 379, 411 of the IPC and Section 33 of the Indian Forest Act, 1927. The maximum punishment for the offence under Sections 379 and 411 of the IPC is up-to three years and under Section 33 of the Forest Act is six months. Therefore, in terms of Section 468 Cr.P.C the cognizance should have been taken within a period of three years. But the same has been taken after expiry of about seven years without condoning the delay in terms of the requirement of Section 473 Cr.P.C.

Section 469 Cr.P.C. speaks as under:-

469. Commencement of the period of limitation

(1) The period of limitation, in relation to an offender, 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 identify 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.

Therefore, the order of cognizance passed by the Court below is not in accordance with law.

In such circumstances, the order dated 17.6.15 passed by the learned JM 1st Class Hajipur (Vaishali) in Desari (Sahadai O.P.) P.S. case no. 5 of 2008 along with entire criminal proceeding against the petitioners is hereby set aside.

This Cr. Misc. petition is, accordingly, allowed.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	26.09.2018
Transmission Date	26.09.2018

