

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4441 of 2017

Arising Out of PS. Case No.-427 Year-2003 Thana- GOVERNMENT OFFICIAL COMP.
District- East Champaran

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Pankaj Kumar @ Pankaj Prasad son of Hemraj Prasad, Resident of Village-
Dhankharaiya PS-Harsidhi, Distt-East Champaran, Motihari.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Saket Tiwary, Mr. Saket Gupta, Mr. Anuraj Singh, Mr. Tarun, Advocates
For the Opposite Party/s :		Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER

6 17-05-2019 Petitioner has challenged the order dated 16.04.2008 passed by Smt. S. Rani, Judicial Magistrate-1st Class, East Champaran at Motihari in connection with Govt. Complaint Case No. OC 427/2003 whereby and whereunder petitioner has been summoned to face trial for an offence punishable under Sections 5, 8, 9 and 13 of Bihar Saw Mill Regulation Act, 1990 as well as under Section 41, 42, 61 of the Indian Forest Act (Amended as Bihar Amendment Act, 1989).

2. In order to appreciate the submissions having been at the end of the rival parties, bereft of unnecessary details, the salient features relating to the present episode is to be taken note of. It is evident that on 27.05.2003, the Forest Officer conducted a raid at the Saw Mill of the petitioner, found the Saw Mill in



operation without license whereupon has been seized along with timber logs as per seizure list and for that, necessary information has been furnished before the Forest Officer whereupon, prosecution has been launched followed with the order of cognizance, subject matter of the instant petition.

3. It has been submitted at the end of learned counsel for the petitioner that the whole prosecution happens to be *mala fide* and ante-dated. In order to justify the same, drew attention toward the initial report which contains date 27.05.2003 seizure list (page no.11 of the brief) having dated 27.05.2003, Zimmanama dated 27.05.2003 (page no.12) the enquiry report (page no. 13), the order of the Ranger. All these documents did not contain signature of CJM/cognizance taking court with the date, the prosecution report (page no.9) which contains the date 05.06.2003 but, it has got signature of CJM dated 16.04.2008.

4. That being so, the whole phenomenon creates grave doubt over the authenticity of the prosecution case and in likewise manner, also creates the prosecution vulnerable, more particularly, in terms of Section 468 CrPC. Consequent thereupon, the order impugned is fit to be set aside.

5. Learned APP while opposing prayer, submitted that some sort of procedural lapses could not be held sufficient



to set aside the order of cognizance because of the fact that those lapses have got no bearing. Consequent thereupon, the order impugned is fit to be confirmed.

6. During course of hearing, in order to trace out real affair in consonance with the documents so filed at the end of the petitioner, a report from the lower court was called for, and the same is available on the record. From the perusal of the same, it is evident that Annexure-1 contains the case no. 40/2003 (appears to be relating to the department) as Govt. Case No. 427/2003 is found at the top of the prosecution format. The order impugned happens to be of the year 2008. From perusal of the report submitted by the CJM, it is evident that offence report no. 40/2003 of the Forest Department against the petitioner was communicated to the Court of CJM vide letter no. 96 dated 28.05.2003 and the most surprising feature is that prosecution report dated 05.06.2003 which was to be submitted after thorough enquiry within reasonable time, was submitted before the Court on 16.04.2008 whereupon the order of cognizance has been passed. The same is also apparent from the order impugned.

7. Now coming to the offence, whereunder cognizance has been taken, it is apparent that Section 41 is not



at all a penal Section rather it speaks about the power to make Rules relating to transit of Forest produce and in likewise manner, Section 61 happens to be relating to saving of power to release property seized, again not a penal provision. Section 42 is the Penal provision prescribing penalty for breach of Rules framed under Section 41 and the same prescribes imprisonment of six months as well as fine appertaining to Rs. 500/- or both and in certain circumstance, prescribes under Sub-Rule-2, double to that effect, that means to say, in certain cases, imprisonment may be of one year, fine appertaining to Rs. 1000/- or both. The State Amendment did not identify the categorization rather it simply speaks minimum term of six months which may extend to two years and in like wise manner, minimum fine of Rs. 1000/- which may extend to Rs. 5000/- or both. However, the offence has been made cognizable and non bailable.

8. In likewise manner, Section 5, 8, 9 and 13 are not penal provisions rather the penal provision happens to be Section-14 (Bihar Saw Mill Regulation Act, 1990) prescribing sentence which may extend to one year and with fine, may extend to Rs. 10,000/- or with both, and in case of continuing offence Rs. 200/- every day. In likewise manner, where happens



to be 2nd or subsequent offence, minimum offence has been prescribed as three months and minimum fine of Rs. 3,000/-. In certain cases six months, fine which may extend to Rs. 3,000/- or both.

9. Chapter XXXVI of CrPC prescribes limitation for taking cognizance of certain offence and Section 468 CrPC prescribes limitation and for better appreciation, the same is quoted hereinbelow:-

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 term exceeding one 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.]

10. Certainly, from the discussions made hereinabove, it is evident that none of the penal provisions, that



means to say, 42 of the Indian Forest Act (Bihar Amendment) as well as Section 14 of Bihar Saw Mill Regulation Act, 1990 prescribes sentence of more than two years and on account thereof, the period of limitation happens to be that of three years whereupon, the order of cognizance would have been passed up to year 2006. Crossing the limit, the order of cognizance is found hit by the limitation. Although, there happens to be specific provision for condoning the delay at least in terms of Section 473 CrPC which, from the order impugned is found lacking nor there happens to be prayer to that effect.

11. That being so, the order of cognizance is set aside. Petition is allowed.

(Aditya Kumar Trivedi, J)

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