

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32184 of 2016

Arising Out of PS. Case No.-197 Year-2008 Thana- GOVERNMENT OFFICIAL COMP.
District- Patna

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Bhuneshwar Mistry @ Bhubneshwar Mistry Son of Late Sukhdeo Mistry
resident of village - Ankuri, P.S. Paliganj, District - Patna

... .. Petitioner/s

Versus

1. State of Bihar and Anr
2. The Forester, Masaurhi-cum-Paliganj, District - Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vinay Mistry, Advocate
For the Opposite Party/s : Mr. Satyendra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

11 15-02-2024

1. Heard learned counsel appearing for the parties.

2. The present application under section 482 of the Code of Criminal Procedure (in short 'the Code') has been filed for quashing the order dated 06.04.2010 passed by the learned Additional Chief Judicial Magistrate, Danapur in connection with Complaint Case No. 197(C2) of 2008, whereby the cognizance has been taken for the offences punishable under sections 8, 9, 10 and 13 of the Bihar Saw Mills (Regulation) Act, 1990.

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 Magistrate, Danapur were without jurisdiction.

4. 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."

5. Learned counsel for the petitioner has also relied



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

6. He has also placed reliance on an order dated 04.07.2012 passed in C.W.J.C. No. 11206 of 2005 in which also 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 :-

"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."

7. 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.

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 Complaint Case No. 197(C2) of 2008 pending before the learned Sub Divisional Judicial Magistrate, Danapur is hereby quashed.

9. The application stands allowed.

(Chandra Shekhar Jha, J)

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