

(2006) 12 PAT CK 0040

In the Patna High Court

Case No : Criminal Miscellaneous No. 17292 of 2004

Baldeo Singh

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 12-12-2006

Acts Referred:

Bihar Saw Mills (Regulation) Act, 1990 — Section 13, 14, 7, 8, 9
Forest Act, 1927 — Section 41, 42, 52, 64

Citation : (2007) 1 PLJR 647

Hon'ble Judges : Dharnidhar Jha, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharnidhar Jha, J.—Heard the parties. The present petition seeks quashing of annexure-1. i.e. the forwarding report regarding the violation of certain provisions of Indian Forest Act and Saw Mills Regulation Act, 1990 and thereby commission of offences as indicated in the forwarding report addressed to the learned Chief Judicial Magistrate, Patna vide memo No. 509 dated 30.8.03 which is from the Forest Extension Officer of Patna area.

2. A consideration of the above memo indicates that the petitioner was granted transit permit for transporting certain logs of wood as appearing at page-2 of the typed copy (Annexure-1). It is also not disputed that those logs bore hammer marks which are acquired to be put over the Forest produce for the purpose of being transported. What was disputed was that the description of the logs of wood which appeared in the transport permit varied from what actually was found at the site which was being unloaded in the night intervening 29/30.8.03. The Forest Officer thought that it was violation of the provisions of the Indian Forest Act and also the Saw Mills Regulation Act and as such arrested the persons named in the abovenoted forwarding memo and sent the memo to the learned Chief Judicial Magistrate, Patna as may appear from the copy of the record which has been filed with the present petition. Now the prosecution report

has been filed and a copy of the same has been placed before this Court as Annexure-C to the counter filed by the O.Ps. No. 2 and 3 i.e. the Ranger, Forest Division, Patna and Divisional Forest Officer, Patna.

3. As indicated above the petition seeks the quashing of the prosecution order passed by the learned C.J.M, on the prosecution report as regards the constitution of any offence which were alleged to be committed by the accused persons. However, it was contended that the offences which are sought to be taken cognizance on the prosecution report by the O.P. Nos. 2 and 3 are those under sections 41, 42, 52 and 64 of the Indian Forest Act and also under sections 7, 8, 9, 13 and 14 of the Saw Mills Regulation Act. I was taken through each of the provisions of the Indian Forest Act as also the Saw Mills Regulation Act to show that I could quash the criminal offence prescribing the sentence.

4. Those provisions have been read over to me and perused by me also do not constitute the offence. I may point out that Section 41 of the Indian Forest Act and those of Sections 52, 64 do not prescribe any offence nor do they prescribe any sentence, for violating any of the provisions of the Forest Act. Likewise except Section 14 of the Saw Mills Regulation Act, 1990 Sections 7, 8, 9 and 13 are provisions dealing with some of the regulatory and enforcement provisions of the abovenoted Act and they do neither define any offence nor they create any sentencing jurisdiction for any court. This is one aspect of the matter which has been pointed out to me and which I have considered.

5. What I find is that the court before whom the prosecution report has been filed is yet to act upon it so the argument that the prosecution may be quashed appears completely out of the jurisdiction of this court at the present stage. Similarly the argument that the provision 468 is not applicable mutatis mutandis, barring the jurisdiction of the court of act upon it also could not be looked into by me because the court which is empowered to take cognizance of the offence could look into it. I believe that the court having jurisdiction to take cognizance cannot over look certain provisions which create power or divest it of its power and in the above view of the law I find that this court does not have any jurisdiction to entertain this petition. In my considered view the petitioner could better approach the court which is still to pass an order on the prosecution report and which must be required to pass an order upon it and the petitioner and some of the accused persons could appear and point out the legal provisions and the court. I trust, may consider it in their real perspective. With the above observation, I find no merit in the petition and the same is dismissed.