

**(2012) 03 GAU CK 0075**

**In the Gauhati High Court**

**Case No :** Criminal Revision Petition Nos. 458 & 459 of 2011

Bhadra Singh & Ors.

APPELLANT

Vs

State of Assam

RESPONDENT

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**Date of Decision :** 13-03-2012

**Acts Referred:**

Assam Forest Regulations, 1891 — Section 41, 41

**Citation :** (2012) 6 GLR 76 : (2012) 4 GLT 240

**Hon'ble Judges :** P.K.Musahary, J

**Bench :** Single Bench

**Advocate :** Advocates appeared for the Petitioners: Mr. A.K. Bhuyan , Ms. B. Bhuyan?? Advocate appeared for the Respondent: Mr. D. Das, Addl. PP, Advocates appearing for Parties

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## **Judgement**

P. K. Musahary, J.—The facts and the issues involved in the above cases are similar and as such they are heard and being disposed of by this common judgment and order.

2. As on facts it may be stated briefly that the accused petitioners are drivers and handymen of two different trucks. Their trucks were intercepted by some forest officials on suspicion of carrying timbers illegally. In fact, on being checked, the forest officials found some extra pieces of timbers/logs which were not included in the challans and T.Ps. The trucks were unloaded, inventories were prepared and excess timbers /logs were seized. The prosecution reports were prepared by the Forest Department on 12.12.2007 and the same were submitted before the court of Judicial Magistrate, 1st Class, Sankardev Nagar, Hojai under Sections 40/41/49/60(i) of the Assam Forest Regulation, 1891. Based on them, the C.R. Case Nos. 4/08 and 5/08 were registered against the accused petitioners. On their appearance before the court, charge was framed u/s 41 of the Assam Forest Regulation, 1891 (hereinafter referred to Regulation only in short). The charge being read over and explained, the accused petitioners pleaded not guilty and claimed to stand trial. In both the cases the prosecution

examined three witnesses, while defence examined no witness. At the closure of the evidence the accused petitioners were examined u/s 313 Cr.P.C. but they refused to produce any witness in their defence. In C.R. Case No.4/08 the learned Judicial Magistrate, 1st Class, Sankardev Nagar, Hojai convicted the accused petitioners u/s 41 of the Regulation and sentenced them with simple imprisonment for one year. Against the said conviction and sentence an appeal was filed, which was registered as Criminal Appeal No. 14(N)/09 and the same was dismissed vide judgment dated 11.11.2011 passed by the learned Addl. Sessions Judge, Nagaon, Assam. The present Criminal Revision Petition No.458 of 2011 is directed against the aforesaid judgment dated 11.11.2011 rendered by the lower appellate court. Similarly the accused petitioners in C.R. Case No. 5/08 were also convicted and sentenced to undergo simple imprisonment for one year vide judgment dated 5.1.2009 passed by the learned Judicial Magistrate, 1st Class, Sankardev Nagar, Hojai, against which, criminal appeal No.2(N)/2009 was preferred. The said appeal was dismissed by the learned Addl. Sessions Judge, Nagaon vide judgment dated 11.11.2011, which is now challenged by the accused/petitioners in the Criminal Revision Petition No.459/2011.

3. I have heard Mr. A K Bhuyan, learned counsel for the petitioners and Mr. D. Das, learned Addl. Public Prosecutor, Assam, appearing for the Respondent/State.

4. A number of grounds have been taken in challenging the impugned judgment passed by the learned trial court as well as the appellate courts below. The main ground of challenge is that the learned courts below adopted summons procedure in the instant cases instead of adopting warrant procedure for a case arising out of a complaint and due to adoption of wrong procedure the entire criminal proceeding has been vitiated and the impugned conviction and sentence have been rendered void ab initio making it liable to be set aside and quashed.

5. Before examining the above question raised by the petitioners, it may be noted that facts of the cases are not disputed. If it is found that the learned courts below adopted wrong procedure, it may not be necessary to deal with other grounds taken in these petitions.

6. The LCR in respect of C.R. case No.04/ 08 has been made available at the time of hearing. I have gone through the same. The accused petitioners Shri Bhadra Singh and Md. Mushid Ali were arrested and produced before the Court of learned Judicial Magistrate, 1st Class, Sankardev Nagar, Hojai on 13.12.2007. After hearing both sides, charge was framed against the accused petitioners under Section 41 of the Regulation vide order dated 2.8.08. The Court directed to issue summons fixing 6.9.08 for evidence. One Guna Kanta Hazarika, Forester Grade I was examined and cross-examined on 18.7.2008 as P.W.I. Another Forester Grade I, Shri Nabin Chandra Hazarika, was examined and cross-examined on 20.10.2008 as P. W.2. One Forest Guard, Sri Bhaben Ch. Bhuyan was also examined and cross-examined as P.W.3 on 6.12.2008.

7. The seizure list, the statement of accused Bhadra Singh(driver), the statement

of accused Mushid Ali (handyman), log measurement book and offence report were proved and marked as Ext. 1, 2, 3, 4 and 5 respectively. The records of other case namely C.R. Case No.5/08 has not been made available but it has been submitted by the learned counsel for the petitioners that the aforesaid Forest Officials were examined and crossexamined as prosecution witnesses and same set of documents were proved and exhibited during the trial.

8. First of all, it is relevant to peruse the offence report dated 12.11.07 (Ext.5) prepared and submitted by Sri Nabin Ch. Hazarika, Forester Grade I of Forest Department, who was examined as P. W. 1. After interception of timber loaded trucks in question, inventories, seizure list etc. were prepared in presence of P.Ws 2 and 3. Statements of the accused persons were also prepared in presence of the aforesaid official witnesses. On the basis of the said offence report the C.R. Cases were registered. The criminal cases were launched at the instance of the Forest Department. There is no dispute on it. Chapter XIX of the Cr.P.C., 1973 provides for trial of warrant cases by Magistrates. There are two categories of warrant cases triable by Magistrate. Category "A" relates to cases instituted on a police report. Sections 238 to 243 of the Cr.P.C. deal with the cases instituted on a police report under category "A". Category "B" relates to cases instituted otherwise than on police report. Sections 244 to 250 deal with the cases instituted otherwise than on police report, under category "B".

9. Chapter XX of the Cr.P.C. deals with trial of summons cases by a Magistrate. Trial of summons cases are covered under Sections 251 to 259 of the Cr.P.C. As per submissions of the learned counsel for the petitioners, the learned Judicial Magistrate, 1st Class as trial court wrongly adopted the procedure provided under Chapter XX of the Cr.P.C. in disposal of the C.R. Cases. In Chapter XX of the Cr.P.C., unlike the provision under Chapter XIX relating to trial of warrant cases, nothing has been mentioned whether summons cases could be instituted on police report or otherwise than on police report. Section 251 simply provides that as soon as the accused appears or is brought before the Magistrate, the Magistrate must satisfy himself, if the case is instituted upon police report, necessary copies of police report and other documents as referred to in Section 207 have been furnished to the accused. The Magistrate is duty bound to state to the accused the particulars of offence on which he is accused and ask whether he pleads guilty or not. In trial of summons cases under Section 251 no formal charge is necessary and if the accused pleads guilty, the Magistrate may convict him at once under Section 252 of the Cr.P.C. If the accused is not convicted on the plea of guilty, the Magistrate shall, after hearing the prosecution about its case, record the evidence of all witnesses as the prosecution brings without summons and also for whom the Magistrate may have issued summons on the prosecution applying for the same in sufficient time before the hearing.

10. In the present case offence report is received by the Magistrate from the Forest Officials and not from the police. So the present case clearly falls under cases instituted otherwise than police report which is triable under the provisions of

Section 244 to 247. This being the admitted position, there was no scope for trial of the present cases under ChapterXX of the Cr.P.C. However, in certain cases, summons cases can be tried as warrant case and a warrant case as summons cases viceversa if it is found by the Magistrate concerned that it was, in his opinion, necessary to do so in the interest of justice. For coming to such opinion, the reason should be recorded /indicated by passing an order in the order sheet. On going through the LCR as made available at the time of hearing, I find no such order has been passed by the learned Magistrate. It is, therefore, found that the Magistrate concerned proceeded with the case as summons cases under ChapterXX of the Cr.P.C. without recording the reason for doing so and thereby proceeded wrongly as if the cases were instituted on police report, although it was clearly found from the record that cases were instituted otherwise than a police report. The cases having not been instituted on police report to be tried under heading "A" in ChapterXTX nor being initiated as summons cases on police report under ChapterXX of the Cr.P.C., the learned Magistrate committed a grave error in law in proceeding with the present criminal cases as summons cases. I find force in the submissions made by the learned counsel for the petitioners. The entire proceedings, in my considered view, have been vitiated due to adoption of a wrong procedure and the conviction and sentence as imposed by the learned Magistrate as trial court and the judgments passed by the learned Addl. Sessions Judge as appellate court, are not sustainable under the law and the same are liable to be quashed and set aside. Accordingly, the impugned judgment & order convicting and sentencing the accused petitioners and the impugned judgments passed by the appellate court below confirming the said conviction and sentence are hereby quashed and set aside.

11. It is not felt necessary to deal with the other legal points raised by the appellants/ petitioners in the grounds mentioned in the petitions. The petitions stand allowed. In such cases, the revisional court usually remands the matter to the concerned court below for retrial and adjudication in accordance with law but considering the fact that a long period of more than 4 years has already elapsed since the institution of the cases, it is felt inexpedient and improper to remand the matters, for, if it is done so, it would cause unnecessary harassment to the accused petitioners and abuse of the process of the court.

12. Send down the LCRs forthwith.