

(2016) 05 JH CK 0100
In the Jharkhand High Court
Case No : W.P.(Cr.) No. 200 of 2012

Braj Bhushan Singh

APPELLANT

Vs

State of Jharkhand and others

RESPONDENT

Date of Decision : 10-05-2016

Acts Referred:

Bihar Saw Mills (Regulation) Act, 1990 — Section 13, 5

Citation : (2016) 2 AIRJharR 835 : (2016) 6 FLT 837 : (2016) 4 JCR 212 :
(2016) 3 JCR 582

Hon'ble Judges : Prashant Kumar, J.

Bench : Single Bench

Advocate : Shailendra Kumar Singh, Advocate, for the Appellant; Binod Singh, S.C. (L&C), for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar, J.—Petitioner has challenged the order dated 20.6.2003 passed by the Divisional Forest Officer-cum-Licensing Officer, Giridih in Confiscation Case No. 107 of 2000, whereby the articles seized from the premises of petitioner has been confiscated under section 13 of the Bihar Saw Mills (Regulation) Act, 1990.

2. It appears that against the above order petitioner filed an appeal before the Principle Sessions Judge, Giridih vide Miscellaneous Appeal No. 12 of 2003 corresponding to Confiscation Appeal No. 54 of 2011. The said appeal was dismissed by the learned Principal Sessions Judge, Giridih vide judgment dated 18.5.2012. The aforesaid judgment also impugned in this application.

3. It appears that respondents conducted a raid in the petitioner's Saw Mill on 28.8.2000 and it was found in running condition. It is alleged that petitioner was running the saw mill illegally and unauthorisedly and woods were being used in the said Saw Mill. Accordingly, the woods, logs lying in the Saw Mill and as well other articles seized and the same were given in the custody of one Bhuneshwar

Sharma, after preparation of seizure list.

4. It is alleged that due to the acts and omissions of petitioner, the forest department incurred a loss of Rs. 92327/-. Accordingly, the offence reported to the learned CJM, Giridih on 29.8.2000 and thereafter forest case no. 292 of 2000 instituted. The learned CJM, Giridih vide order dated 31.1.2001 took cognizance of the offences under sections 5, 6, 7, 8, 9 and 10 of the Bihar Saw Mills (Regulation) Act, 1990 and sections 33, 41 and 42 of the Indian Forest Act.

5. It appears that petitioner challenged the order of cognizance in this Court by filing a criminal miscellaneous petition bearing Cr.M.P. No. 92 of 2005. The aforesaid criminal miscellaneous petition has been allowed by a bench of this Court vide order dated 23.11.2007. From perusal of the said order, I find that this Court held that the offences enumerated in the order of cognizance are not made out, accordingly, it found that the order of cognizance cannot be sustained. Thus, the same has been quashed.

6. It appears that the forest department had simultaneously started a confiscation proceeding vide Confiscation Case No. 107 of 2000 for confiscation of articles seized from the Saw Mill of the petitioner, under section 13 of the Bihar Saw Mills (Regulation) Act, 1990.

7. It then appears that Divisional Forest Officer vide order dated 20.6.2003 had confiscated the seized articles. Thereafter, petitioner filed appeal before the learned Principal Sessions Judge, Giridih vide Miscellaneous Appeal No. 12 of 2003 corresponding to Confiscation Appeal No. 54 of 2011 which was dismissed by the learned Principal Sessions Judge, Giridih vide judgment dated 18.5.2012. Against the aforesaid two orders, the present writ application filed.

8. It is submitted by Sri Shailendra Kumar Singh, learned counsel for the petitioner that since the order by which the learned Chief Judicial Magistrate, Giridih took cognizance of the offences, has already been quashed by this Court vide Annexure-2, therefore, no criminal case pending against the petitioner. Hence the order of confiscation as well as the judgment passed in the appeal cannot be sustained.

9. On the other hand, Sri Binod Singh, learned S.C. (L&C) submitted that the confiscation order passed under section 13 of the Bihar Saw Mills (Regulation) Act, 1990, which provides that if any person operate a saw mill without any licence, then the licencing authority has power to confiscate the logs and machinery of the saw mill. He further submits that from perusal of Annexure-2, the order of this Court, it is clear that this Court has only declared that section 5,6,7,8,9 and 10 of the Bihar Saw Mills (Regulation) Act, 1990 are not the penal sections, thus the cognizance taken in the aforesaid sections by the learned Chief Judicial Magistrate, Giridih cannot be sustained.

10. Sri Binod Singh submits that from the aforesaid facts it is clear that this Court has not concluded that the petitioner has not violated the aforesaid

sections. Sri Binod Singh submits that from perusal of order of confiscation, it is clear that the petitioner has admitted that he has no licence for running the Saw Mill. Thus, there is violation of section 5 of the Bihar Saw Mills (Regulation) Act, 1990. Thus, the licencing authority has power under section 13 of the Bihar Saw Mills (Regulation) Act, 1990 to confiscate the articles seized from the Saw Mill of the petitioner. Accordingly, Sri Binod Singh submits that there is no illegality in the impugned order and judgment.

11. Having heard the submissions, I have gone through the record of the case. From perusal of order of this Court dated 23.11.2007 passed in Cr.M.P. No. 92 of 2005, I find that this Court had quashed the order of cognizance so far it relates to sections 5,6,7,8,9 and 10 of the Bihar Saw Mills (Regulation) Act, 1990, on the ground that the said sections are not penal sections. In the aforesaid order, this court, no where, declared that petitioner has not violated the aforesaid provisions of Bihar Saw Mills (Regulation) Act, 1990. Under the said circumstance, though the violation of the aforesaid sections of Bihar Saw Mills (Regulation) Act, 1990 is not penal in nature, but for violation of the same other consequences will follow.

12. Section 13(1) of the Bihar Saw Mills (Regulation) Act, 1990. reads as follow:-

13. Confiscation of saw mills etc.-(1) Save as provided in clause(b) of section 5.

(a) Where a saw mill or saw pit is established or operated in an area declared to be a prohibited area under sub section (1) of section 6, or

(b) where a saw mill or saw pit is established or operated without a licence or without renewal of licence under sub section(2) and (4) respectively of section 7; or

(c) where the saw mill or saw pit is operated after suspension or revocation of a licence under sub section (5) of section 7; or

(d) Where the saw mill or saw pit is operated with the aid of electrical energy or electrical installation in contravention of the provisions of sub section (1) of section 11; or

(e) unaccounted wood is stored in the saw mill or saw pit, the licencing officer may order confiscation of the stock of wood unlawfully stored together with whole or portion of the plants and machinery, implements and equipments which have been used in the commission of the offence

From perusal of the aforesaid section, I find that if a person runs a saw mill without a licence or without renewal of licence then in that case the licencing officer has power to confiscate the stock of wood unlawfully stored together with whole or portion of the plants and machinery.

13. It is worth mentioning that petitioner has appeared in the confiscation proceeding and filed show cause. In the said show cause, petitioner has not denied that he was not running a saw mill, rather he pleaded that he was

running the saw mill outside the forest area, therefore, the question of taking licence does not arise. Under the said circumstances, it appears that petitioner has admitted that he was running the saw mill without obtaining the licence.

14. Section 5 of the Bihar Saw Mills (Regulation) Act, 1990. deals with the provisions for grant of licence, which reads as follow:-

5. Application for licence.- On and from the appointed day:-

(a) no person shall establish a saw mill or a saw pit except under the authority and subject to the conditions of a licence granted in that behalf under this Act:

(b) no person shall operate a saw mill or a saw pit in existence on the said date, unless he is granted a licence in that behalf under this Act on an application made by such person within a period of thirty days from such date.

Provided that for the period of thirty days and thereafter the period during which the application is pending for consideration, it shall be deemed as if such person was granted a licence under this Act and he was operating the saw mill or saw pit accordingly.

There is nothing in the said provision to show that if a person runs a saw mill outside the forest area, then he is not required to take licence for running a saw mill. In the show cause, petitioner has not stated that on which date he filed application for grant of licence. Thus, in my view, sub section (b) of section 5 along with the proviso has no application in the case of petitioner.

15. In view of the aforesaid facts and circumstance, since the petitioner was running a saw mill without any licence, therefore, he has violated the provisions of section 5 of the Bihar Saw Mills (Regulation) Act, 1990 and in that view of the matter, the licencing authority has got power to confiscate the seized articles under section 13(1)(b) of the aforesaid act.

16. In that view of the matter, I find no illegality in the impugned order as well as in the judgment passed by the learned appellate authority.

17. Accordingly, I find no merit in this writ application, the same is dismissed.