
(2006) 11 PAT CK 0076
In the Patna High Court

Daroga Singh and Others

APPELLANT

Vs

The State of Bihar and Another

RESPONDENT

Date of Decision : 29-11-2006

Acts Referred:

Constitution of India, 1950 — Article 21

Criminal Procedure Code, 1973 (CrPC) — Section 468, 482

Citation : (2007) 1 PLJR 325

Hon'ble Judges : Ghanshyam Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ghanshyam Prasad, J.—Heard.

2. Both the above applications filed u/s 482 Cr.P.C. have been heard together and are being disposed of by this common order.

3. Cr.Misc. No. 15166 of 2005 has been filed to quash the order dated 12.1.2005 passed in Forest Case No. 222 of 2000 alongwith entire criminal proceeding. The other Cr.Misc. has also been filed to quash the order dated 12.1.2005 passed in Forest P.S. Case No. 181 of 2000 alongwith the entire proceeding. Both the orders have been passed by the learned C.J.M., Sasaram through which cognizance have been taken against the petitioners under various provisions of Forest Act.

4. In both the cases, the petitioners have been prosecuted on the basis of reports dated 18.4.1993/4.9.1992 submitted by Conservator of Forest before D.F.O., Sasaram. However, the D.F.O. submitted prosecution reports in both the cases after lapse of more than 7/8 years of the alleged date of the occurrence or submission of the reports by Conservator of Forest. In first case, it was filed on 18.8.2000 whereas in second case, it was filed on 7.12.2000. Accordingly, after condoning the delay, the learned C.J.M. took cognizance in both the cases. However, the petitioners moved before the Hon"ble Court against the original

order of cognizance. The Hon"ble Court through order dated 13.8.2002 passed in Cr.Misc. No. 29198 and dated 2.7.2002 passed in Cr.Misc. No. 33392 of 2001 quashed the orders of lower court and remitting back the matter for re-hearing on point of condonation of delay and pass fresh orders.

5. Accordingly, the learned C.J.M. re-heard the parties and pass the impugned orders after condoning the delay in lodging the prosecution.

6. The learned Counsel for the petitioners challenged the orders in question on two scores. It is submitted that the maximum punishment provided for the alleged occurrence is only two years for which the limitation u/s 468 Cr.P.C. is only three years but the prosecution in both the cases have been launched and cognizance taken after lapse of several years of the expiry of limitation. The grounds taken for condonation of delay are all bogus, unfounded and illegal as the report of the concerned authority had already been submitted alongwith the enquiry report as back as in the year 1993/1992. The learned Counsel for the petitioners relied upon a decision of the Supreme Court reported in 1981 S.C. 1054 (State of Punjab v. Sarvan Singh).

7. The second submission is that on the date of the alleged date of the occurrence, the petitioners had valid lease for doing mining works as per the lease granted by the Mining Department in the year 1986 which continued upto 1994. The validity of the right of the petitioners for mining works has also been recognized by non-else than the Forest Department itself vide its letter No. 4151 dated 18.12.1993(Annexure-7). It is further submitted that earlier in the year 1992, the petitioner Daroga Singh had been prosecuted for the same crime which had been set aside vide order dated 23.7.1993 passed in Cr.W.J.C. No. 658 of 1992 (Annexure-8) on the ground of validity of lease for mining.

8. The admitted fact is that in both the cases, the Forest Department filed a prosecution report much after expiry of limitation period. The occurrence is said to be committed on 18.4.1993/4.9.1992 and on the same date, the Conservator of Forest prepared the reports and send them to the department for launching prosecution against the petitioners. However, it was filed after lapse of more than 7-8 years. As per Section 468 Cr.P.C., the limitation for taking cognizance , for offences having sentence of more than a year but not exceeding three years is three years only. Apparently, the prosecution in both the cases have been lodged after three years of the expiry of limitation.

9. Annexure-3 is the copy of the condonation petition filed by the prosecution. Similar plea for condonation of delay has been taken in both the cases. The main ground is dearth of staff and vastness of the forest area. In my view, such grounds may be sufficient to explain delay for few months but certainly not for delay of more than three years. In the above cited decision of the apex court, the object of providing limitation has been explained which is as follows:

The object which the statute seeks to subserve is clearly in consonance with the concept of fairness of trial as enshrined in Article 21 of the Constitution of India.

It is, therefore, utmost importance that any prosecution whether by the state or a private complainant must abide by the law and law or take the risk of the prosecution failing on the ground of limitation. The prosecution against the respondent being barred by limitation. The conviction as also the sentence of the respondent as also the entire proceedings culminating in the conviction of the respondent herein is non est.

For the reasons give above, we hold that the point of law regarding the applicability of Section 468 of the Code of Criminal Procedure has been correctly decided by the Punjab and Haryana High Court. This Court has also taken the same view in a number of decisions. The result is that the appeal fails and is dismissed.

10. Thus, from the above decisions, it is quite clear that the prosecution of the petitioners in both the cases are hopelessly barred by limitation as provided u/s 468 of the Code of Criminal Procedure.

11. So far other submission is concerned, Annexure-5 series coupled with Annexures 6 and 8 would go to show that the petitioners have valid mining licence on the alleged date of the occurrence in both the cases. The right of mining of the petitioners have also been recognized by the Forst Department through letter(Annexure-6).

12. Thus, for the reasons stated above, both the applications are allowed and the order in question alongwith entire proceedings stand quashed.