

(1989) 06 OHC CK 0007

In the Orissa High Court

Case No : Criminal Revns. No's. 21 and 22 of 1989

Dayal Trading Co.

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 27-06-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468
Orissa Forest Act, 1972 — Section 45
Orissa Forest Saw Pits and Saw Mills (Control) Rules, 1980 — Rule 14(A), 5
Orissa Timber and Other Forest Produce Transit Rules, 1980 — Rule 21, 4

Citation : (1990) CriLJ 715 : (1989) 2 OLR 124

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : M. Jain, for the Appellant; B. Misra, Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.P. Mohapatra, J.—These two criminal revisions arise out of 2(b)CC Case No. 44/TR 309 of 1988 of the Court of Judicial Magistrate, Madanpur-Rampur. They were heard analogously and are disposed of by this order.

2. The petitioner is the owner of a saw mill and deals with timber. Officers of the Forest and Police (Vigilance Departments raided the saw mill premises on 9-4-1988 and seized a huge quantity of round logs, sawn sized timber, documents and accounts valued at several lakhs of rupees by seizure-list (Annexure 1). Later a prosecution report was submitted in court on the allegation that the petitioner had committed offences u/s 45 of the Orissa Forest Act (hereinafter referred to as "the Act"), R. 4 of the Orissa Timber and other Forest Produce Transit Rules, 1980 and R. 14(A) of the Orissa Forest Saw Pits and Saw Mills (Control) Rules, 1980 (hereinafter referred to as the "Transit Rules" and "Saw Pits and Saw Mills Rules"). During the pendency of the case the petitioner applied for release of the logs and timber in his favour and the learned Judicial Magistrate by order dt. 23-12-1988 directed release of the seized sleeper wood

logs subject to furnishing of cash security of Rs. 1,00,000/-. Obviously, the petitioner has not made the cash security deposit.

3. Mr. M. Jain, learned counsel appearing for the petitioner raised the following contentions:-

(1) On consideration of the prosecution report, as well as the seizure-list, and accepting the entire case of the prosecution as true no case has been made out and so the prosecution is liable to be quashed; and

(2) In any view of the matter direction for deposit of cash security of Rs. 1,00,000/- is unreasonably high and so the petitioner should have been directed to offer property security.

The contentions require examination.

4. In column 5 of the original seizure list which is in the lower court record, the following fact has been stated :

"The above timbers were seized during physical verification from the premises of Sankar Saw Mill as it did not tally with the stock register maintained by the company."

The word "not" seems to have been added subsequent to the other writings of the column. According to Mr. Jain, the word "not" was subsequently interpolated in column 5 of the seizure-list. As a matter of fact, when the seizure-list was written and a copy of it was handed over to the petitioner, the word "not" did not find place in column 5. Therefore, if the word "not" is omitted from column 5, no offence at all has been committed by the petitioner because the physical stock of logs and the seized logs and timber tallied with the book balance.

5. It appears true that when the seizure-list was written the word "not" did not find place in column 5 where it was subsequently added. It is also true that in the copy of the seizure-list handed over to the petitioner the said word was absent. But in the seizure-list of the lower court record the word "not" finds place at the appropriate place although in other copies of the seizure-list the said word was not added. From these facts it appears very clear that when the seizure-list was written, the word "not" was omitted from column 5 and was subsequently added. But the question is when it was added. According to Mr. Jain it was an act of interpolation behind the back of the petitioner in the court, but according to the learned Additional Government Advocate, there is no strict proof of and may be the investigating officer added the word "not" in column 5 before the prosecution report along with the seizure-list was filed in the court. The best evidence to prove the interpolation would have been if the petitioner would have immediately obtained the certified copy of the seizure-list. If the alleged interpolation was done in the court record, then the certified copy of it obtained earlier to the interpolation would have shown it. Therefore, at this juncture and without a proper enquiry it is not possible to arrive at a conclusion that the interpolation was made in the seizure-list in court. Nevertheless, even if the word

"not" was added before launching of the prosecution, it should have been done with notice to the petitioner because he had been given a copy of the seizure-list in column 5 of which the word "not" was absent and the facts of the said column showed that the physical balance tallied with the book balance.

6. It is surprising that very senior officers who conducted the raid could commit a careless mistake on which the fate of the case hinges. The learned Judicial Magistrate should make an enquiry in order to find out the truth as to when the word "not" was added in column 5 of the original seizure-list and if he would find an act of interpolation, he should not hesitate to take action against the offending party or person in accordance with law besides submitting a report to the government for appropriate administrative action against the officer or officers concerned.

7. Be that as it may, on the face of column 5 of the seizure-list on physical verification of the stock of seized logs and timber with the book balance there was difference. What was the nature or quantum of difference, however, has not been stated in the prosecution report, except the bare statement that the physical stock did not fully tally with the records. In the prosecution report it has been stated that the petitioner has committed offences u/s 45 of the Act, R. 4 of the Transit Rules and Rule 14-A of the Saw Pits and Saw Mills Rules. Section 45 of the Act empowers the State Government to frame rules to regulate transit of forest produce. It is not by itself a penal provision. Therefore, if a party commits an offence under the Transit Rules he cannot be punished u/s 45 of the Act. He can at best be punished under R. 21 of the Transit Rules. R. 4 of the Transit Rules similarly is not by itself a penal provision. It only authorises the Divisional Forest Officer or any other forest officer in that behalf to issue timber transit permits. As already stated, under the Transit Rules the penal provision is R. 21, ex facie and accepting the facts stated in the prosecution report and the seizure-list to be true, no offence was committed by the petitioner u/s 45 of the Act and R. 4 of the Transit Rules. R. 14-A is obviously applicable to a saw mill and provides as follows:

"14-A. Every person granted a license under R. 5 shall maintain regular accounts of all timber (both round and sawn) received sawn and sold by him in form Nos. 3 to 8 and shall also furnish a half yearly return thereof to the Divisional Forest Officer on or before the 30th April and the 31st October in every year in Form No. 9."

At best a prima facie offence has been committed by the petitioner under R. 14-A in consequence of difference of the stock with the book balance because it has to maintain regular accounts of all timber, both round and sawn and regular accounts shall always mean true and correct accounts. Unfortunately, however, the learned Judicial Magistrate without application of mind took cognizance of offences u/s 45 of the Act and under R. 21 of the Transit Rules and did not take cognizance of the offence under R. 14-A of the Saw Pits and Saw Mills Rules by order dt, 21-6-1988. This court has always told and retold in several decisions

that the act of taking cognizance of an offence is not a mere formality. An order of cognizance results in issuance of summons and a criminal proceeding against a person commences putting him into mental agony and expenditure. He is also exposed to the risk of punishment. Therefore, before cognizance of an offence is taken the Magistrate is duty bound to apply his judicial mind in order to find out whether on the facts alleged by the prosecution there is a prima facie case so as to issue process. If the Magistrate fails to do so and it is found that cognizance of an offence has been taken against an innocent person the blame of judicial harassment will lie on the Magistrate himself. A Magistrate undoubtedly should not bear such blame. On the face of the facts of this case, therefore, the impugned order dt. 21-6-1988 cannot be supported and must be set aside. As a consequence, all subsequent orders passed in the case are bound to be vacated along with the impugned order dt. 23-12-1988.

8. Setting aside of the order of cognizance dt. 21-6-1989 and all subsequent orders, however, do not preclude the learned Judicial Magistrate from reconsidering the facts of the case in order to take cognizance of an offence that might have been committed subject to the law of limitation provided in Section 468 Cr. P.C. If he would choose to do so and find that some offence has been committed by the petitioner he shall be free to pass an order according to law including the custody of the seized timber.

9. For the reasons stated above, the criminal revisions are allowed and the impugned orders in both the cases are set aside subject to the observations made above. The lower court records may be sent forthwith.