
(1985) 07 OHC CK 0014

In the Orissa High Court

Case No : Criminal Revision No"s. 280 and 281 of 1983

J.P. Lath

APPELLANT

Vs

The State of Orissa

RESPONDENT

Date of Decision : 18-07-1985

Acts Referred:

Orissa Forest (Detection, Enquiry and Disposal of Forest Offences) Rules, 1980 — Rule 11
Orissa Forest Act, 1972 — Section 83
Orissa Timber and Other Forest Produce Transit Rules, 1980 — Rule 21
Penal Code, 1860 (IPC) — Section 468

Citation : (1985) 60 CLT 244

Hon'ble Judges : B.N. Misra, J

Bench : Single Bench

Advocate : A.K. Padhi and S.K. Padhi, for the Appellant; Standing Counsel in Cr. Rev. Nos. 280 and 281/83 and Standing Counsel and B.B. Mohanty in Cr. Rev. Nos. 294 and 295/83, for the Respondent

Final Decision : Allowed

Judgement

B.N. Misra, J.—These four revisions which have been heard analogously shall be governed by this judgment. J.P. Lath is the Petitioner in

Criminal Revision No. 280 of 1983 and Criminal Revision No. 281 of 1983 and his prayer is to quash the proceeding initiated against him by the

learned S.D.J.M., Karanjia, in 2(b) CC No. 4 of 1983 and 2(b)CC No. 5 of 1983 respectively. Sukadeo Prasad is the Petitioner in Criminal

Revision No. 294 of 1983 and Criminal Revision No. 295 of 1983 and he has made the same prayer in respect of the aforesaid two cases. For

the sake of convenience J. P. Lath who is accused No. 1 and Sukadeo Prasad who is accused No. 2 in the two cases shall hereafter be referred

to as Petitioner Nos. 1 and 2 respectively.

2. Facts of the case may be briefly stated. Petitioner No. 2, Sukadeo Prasad, is the constituted attorney of M/s. Utkal Contractors and Joinary

Private Limited and Petitioner No. 1 is the Managing Director of the said firm. In the case registered as 2(b)CC No. 5 of 1983 it is alleged that on

27-5-1982 at 9 p. m. truck No. OSS 1597 carrying 120 bags of Sal seeds was checked at Jasipur checkgate and it was found that permit No.

29/4752 dated 27-5-1982 issued by Petitioner No. 2 had been endorsed by one G. Mahanta who had certified that 100 bags of Sal seeds were

being transported in the truck. It is further alleged that there was no permit for the additional 20 bags found in the truck and on enquiry it was learnt

that G. Mahanta was a fictitious person. It appears that a statement had been taken from Petitioner No. 2 at the spot. After completion of enquiry

prosecution report was submitted against the two Petitioners under Rule 21 of the Orissa Timber and other Forest Produce Transit Rules, 1980

and Section 468, I.P.C. by the Project Manager, Research and Development, Similipal Forest Development Corporation Limited, Karanjia, who

has been notified to be a Forest Officer and empowered by the State Government to forward the offence report to the court under Rule 11 of the

Orissa Forest (Detection, Enquiry and Disposal of Forest Offences) Rules, 1980 vide Government Notification No. SRO 464/80 dated 16/17th

April, 1980, published in the gazette date May 9, 1980. On receipt of the prosecution report the learned S.D.J.M., Karanjia, took cognisance

against both the Petitioner under Rule 21 of the Orissa Timber and other Forest Produce Transit Rules, 1980 by his order No. 1 dated 9-3-1983.

In the case registered as 2(b)CO No. 4/83 it is alleged that on 1-6-1982 at 8 a. m. 112 bags of Sal seeds were being carried in truck No. OSS

1597 on the strength permit No. 35/4752 dated 31-5-1982 and on being checked at the Jasipur check-gate it was found that out of 112 bags of

Sal seeds, 23 bags had been loaded at Tato and Petitioner No. 2 instead of issuing a fresh permit in respect of these 23 bags which were loaded at

Tato, had added the quantity of the produce on the same permit and had also shown in the same permit the place Tato without putting his initials to

the additions. On completion of enquiry prosecution report was submitted against the two Petitioners under Rule 21 of the Orissa Timber and

other Forest Produce Transit Rules, 1980 read with Section 83 of the Orissa Forest Act, 1972 by the Project Manager, Research and

Development, Similipal Forest Development Corporation Limited, Karanjia. On receipt of the prosecution report the learned S.D.J.M., Karanjia

took cognizance against the two Petitioners u/s 83 of the Orissa Forest Act, 1972 and under Rule 21 of the Orissa Timber and other Forest

Produce Transit Rules, 1980 by his order No. 1 dated 8-3-1983. The orders of the learned Magistrate taking cognizance against the two

Petitioners are under challenge in these revisions.

3. Mrs. A.K. Padhi, learned Counsel appearing for the Petitioners, has placed before the Court the prosecution report, seizure list, the statements

of witnesses and other relevant documents in the L.C.R. On going through these documents I find no allegations have been made anywhere against

Petitioner No. 1. There is nothing on record to show his involvement with the alleged offences. It appears prosecution report has been submitted

against him as he happens to be the Managing Director of the firm in which Petitioner No. 2 works as the constitution attorney. In this context it

would be useful to refer to a decision of the Supreme Court reported in Municipal Corporation of Delhi v. Ram Kishan Rohtagi and Ors. AIR

1983 B.C. 67, wherein it was inter alia held:

So far as the Manager is concerned, we are satisfied that from the very nature of his duties it can be safely inferred that he would undoubtedly be

vicariously liable for the offence; vicarious liability being an incident of an offence under the Act. So far as the Directors are concerned, there is not

even a whisper nor a shred of evidence nor anything to show, apart from the presumption drawn by the complainant, that there is any act

committed by the Directors from which a reasonable inference can be drawn that they could also be vicariously, liable. In these circumstances,

therefore, we find ourselves in complete agreement with the argument of the High Court that no case against the Directors (accused Nos. 4 to 7)

has been made out ex facie on the allegations made in the complaint and the proceeding against them were rightly quashed.

We, however, do not agree that even accused No. 3, Respondent No. 1, who is Manager of the Company and therefore directly in charge of its

affairs, could fall in the same category as the Directors. Hence, we would set aside that part of the judgment of the High Court which quashes the

proceedings against the Manager, Respondent No. 1 (Ram Kishan Rohtagi).

In the present case also there is not even a whisper nor a shred of evidence nor any materials on record to show that any offence has been

committed by Petitioner No. 1 or that he is vicariously liable for the alleged offences. In view of the principles laid down in the decision of the

Supreme Court referred to above, the proceedings against Petitioner No. 1 must be quashed. However, the proceedings against Petitioner No.

2 must continue as the materials placed on record do ex facie make out a case against him on the basis of which the learned Magistrate has taken

cognizance in the two cases.

4. For the reasons stated above, Criminal Revision No. 280 of 1983 and Criminal Revision No. 281 of 1983 are allowed and the proceedings

initiated against Petitioner No. 1, J.P. Lath, in 2(b) CC No. 4 of 1983 and 2(b)CC No. 5 of 1983 pending in the file of the learned S.D.J.M.,

Karanjia are quashed. I would, however, make it clear that the mere fact that the proceedings have been quashed against Petitioner No. 1 will not

prevent the learned Magistrate from exercising his discretion if in course of further proceedings he is fully satisfied that a case for taking cognizance

against Petitioner No. 1 has been made out on the additional evidence led before him. Criminal Revision No. 294 of 1983 and Criminal Revision

No. 295 of 1983 are rejected and the proceedings in 2(b)CC No. 4 of 1983 and 2(b)CC No. 5 of 1983 shall continue against Petitioner No. 2,

Sukadeo Prasad and be disposed of according to law. L.C.R. be returned immediately.