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**(2009) 09 JH CK 0001**  
**In the Jharkhand High Court**  
**Case No : Criminal M.P. No. 853 of 2005**

Kanhaiya Lal

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision :** 11-09-2009

**Acts Referred:**

Forest Act, 1927 — Section 29, 30, 32, 33, 41

**Citation :** (2009) 09 JH CK 0001

**Hon'ble Judges :** Prashant Kumar, J

**Bench :** Single Bench

**Advocate :** Anil Kumar, for the Appellant; J. Mahto, APP, for the Respondent

**Final Decision :** Allowed

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## Judgement

Prashant Kumar, J.—This is an application for quashing the entire criminal proceeding in connection with G. Case No. 231 of 2005 for alleged offence under Sections 33, 41 and 42 of the Indian Forest Act pending in the court of Chief Judicial Magistrate, Hazaribagh, (now pending in the court of K. Pattadar, Judicial Magistrate, 1st Class, Hazaribagh). The petitioner has also filed an Interlocutory Application whereby he challenged the order dated 17.06.2006 passed by Chief Judicial Magistrate, Hazaribagh in G. Case No. 231 of 2005 corresponding to T.R. Case No. 232 of 2009, whereby and whereunder he took cognizance of the offence under Sections 33, 41 and 42 of the Indian Forest Act.

2 The case of prosecution in brief is that on 14.05.2005, the complainant, Forest Range Officer of Gola Range, had intercepted a truck bearing No. PB-07B 3966 loaded with coal. It is further alleged that after seeing the complainant, the driver fled away however, khalasi of the truck was arrested and on demand he could not produce any document relating to transit of coal. Accordingly, the coal was seized and an offence report was sent to Chief Judicial Magistrate, Hazaribagh. It then appears that after obtaining the sanction from the Divisional Forest Officer, Ramgarh Forest Division, the prosecution report was submitted in the court of Chief Judicial Magistrate, Hazaribagh, who, vide order dated

17.06.2006, took cognizance of the offences under Sections 33, 41 and 42 of the Indian Forest Act.

3. It is submitted by Sri Anil Kumar, learned Counsel for the petitioner that from perusal of offence report as well as the prosecution report, no case under Sections 33, 41 and 42 of the Indian Forest Act is made out. Hence, the entire criminal proceeding including the order taking cognizance, is an abuse of the process of the court. Hence, the same cannot be sustained by this Court.

4. Learned Additional P.P. however submits that petitioner had not followed transit rules for transporting the coal and therefore, he had violated the provisions of Forest Act. Hence, there is no illegality in the prosecution of accused petitioner.

5. Having heard the submission, I have gone through the record of the case. Admittedly, the prosecution report has been filed under Sections 33, 41 and 42 of the Indian Forest Act. From perusal of Section 33 of the Indian Forest Act, it appears that it prescribes punishment to any person who contravenes the notification u/s 30 or rule framed u/s 32 of the Indian Forest Act. Section 30 and Section 32 of the Indian Forest Act run hereinunder:

30. Power to issue notification reserving trees, etc. - The State Government may, by notification in the Official Gazette,-

(a) declare any trees or class of trees in a protected forest to be reserved from a date fixed by the notification;

(b) declare that any portion of such forest specified in the notification shall be closed for such term, not exceeding thirty years, as the State Government thinks fit, and that the rights of private persons, if any, over such portion shall be suspended during such term provided that the remainder of such forest be sufficient, and in a locality reasonably convenient, for the due exercise of the right suspended in the portion so closed; or

(c) prohibit, from a date fixed as aforesaid, the quarrying of stone, or the burning of lime or charcoal, or the collection or subjection to any manufacturing process, or removal of, any forest-produce in any such forest, and the breaking up or clearing for cultivation, for building, for herding cattle or for any other purpose, of any land in any such forest.

32. Power to make rules for protected forests.-

The State Government may make rules to regulate the following matters, namely:

(a) the cutting, sawing, conversion and removal of trees and timber, and the collection, manufacturing and removal of forest-produce, from protected forest;

(b) the granting of licences to the inhabitants of towns and villages in the vicinity of protected forests to take trees, timber or other forest-produce for their own use, and the production and return of such licences by such persons;

- (c) the granting of licences to persons feeling or removing trees or timber or other forest-produce from such forests for the purposes of trade, and the production and return of such licences by such persons;
- (d) the payments, if any, to be made by the persons mentioned in Clause (b) and (c) for permission to cut such trees, or to collect and remove such timber or other forest-produce;
- (e) the other payments, if any to be made by them in respect of such trees, timber and produce, and the places where such payment shall be made;
- (f) the examination of forest-produce passing out of such forests;
- (g) the clearing and breaking up of land for cultivation or other purposes in such forests;
- (h) the protection from fire of timber lying in such forests and of trees reserved u/s 30;
- (i) the cutting of grass and posturing of cattle in such forests;
- (j) hunting, shooting, fishing, poisoning water and settling traps or snares in such forests, and the killing or catching of elephants in such forests in areas in which the Elephants Preservation Act, 1879 (6 of 1879) is not in force;
- (k) the protection and management of any portion of a forest closed u/s 30; and
- (l) the exercise of rights referred to in Section 29.

Section 41 of the Indian Forest Act gives power to make rule to regulate transit of forest produce and Section 42 of the Indian Forest Act prescribes punishment for violation of transit rules made u/s 41 of the Indian Forest Act.

6. Thus, from the plain reading of Sections 30, 32 and 41 of the Indian Forest Act, it is clear that under the said Act, the State Government have no power to issue any notification or frame rule for transit of coal. From perusal of prosecution report, it is clear that there is no allegation against the petitioner or any other accused persons that they were mining the coal in forest area. Admittedly, the coal in question is not a forest produce. Thus, the rule for transit of Forest produce framed u/s 41 of the Indian Forest Act has no application in the case of transit of coal. Under the said circumstance, Section 42 of Indian Forest Act has no application.

7. As noticed above, there is no notification or rule framed by the State Government under Sections 30 and 32 of the Indian Forest Act for transportation of coal. Therefore Section 33 will also not apply. Thus, if the allegation made in the prosecution report is taken to be true on its face value, no offence under Sections 33, 41 and 42 of the Indian Forest Act is made out.

8. Under the said circumstances, I find that initiation of a criminal proceeding under the aforesaid sections of the Indian Forest Act is an abuse of the process

of the court which could not be sustained.

9. In the result, this application is allowed. Consequently, the entire criminal proceeding as well as impugned order dated 17.06.2006 in connection with G. Case No. 231 of 2005 pending in the court of K. Pattadar, Judicial Magistrate, 1st Class, Hazaribagh, is hereby quashed.