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**(2015) 09 JH CK 0069**  
**In the Jharkhand High Court**  
**Case No : W.P. (Cr.) No. 249 of 2015**

Mahadev Sao

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision :** 15-09-2015

**Acts Referred:**

Forest Act, 1927 — Section 29, 29(3), 30, 33, 42

**Citation :** (2015) 4 JLJR 157

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

**Bench :** Single Bench

**Advocate :** Pandey Neeraj Rai, for the Appellant

**Final Decision :** Dismissed

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## Judgement

Prashant Kumar, J.—This application has been filed for quashing the entire criminal proceedings in connection with G. Case No. 486 of 2011 including the order dated 21.12.2013, whereby and whereunder the learned Judicial Magistrate, Koderma took cognizance against the petitioner under Sections 33 & 42 of the Indian Forest Act. At the initial stage, petitioner had taken the plea that there is no notification under Sections 29 & 30 of the Indian Forest Act, therefore, no offence under Sections 33 & 42 of the Indian Forest Act made out.

2. Later on, the State Government filed counter affidavit, wherein it annexed the notification dated 31st August, 1955 issued under Section 29 of the Indian Forest Act and notification dated 5th July, 1961 issued under Section 30 of the Indian Forest Act to show that land in question is forest land.

3. Thereafter, an amendment application filed, wherein the petitioner challenged both the notifications on the ground that at the time of issuance of notification under Section 29 of the Indian Forest Act, no inquiry pending, therefore, the aforesaid notification is bad in law. Consequently, the second notification issued under Section 30 of the Indian Forest Act is also against the law.

4. A supplementary counter affidavit filed, wherein respondent-State has stated

that the inquiry, as envisaged under Section 29 of the Indian Forest Act, had already carried out and the same had been concluded. Accordingly, it is submitted in the supplementary counter affidavit that the notification issued under Section 29(3) is legally sustainable.

5. Having heard the submissions, I have gone through the record of the case. From perusal of notification dated 11th August, 1955, I find that at Clause-3 of the said notification, the State Government had stated that "the nature and extent of rights of Government and of private persons in or over the forest lands and waste lands comprised in this notification have not yet been enquired into and recorded as laid down in sub-section (3) of Section 29 of the said Act, but as the State Government thinks that such enquiry and record will occupy such length of time as in the meantime to endanger the rights of Government and as the enquiry on record of rights will hereafter be made, this notification is issued subject to all existing rights of individuals and communities".

6. Thus, from perusal of aforesaid averments made in the notification, it is clear that at the time of issuance of notification, an enquiry was pending, but the same has not been completed and since in the opinion of the State Government such enquiry will take much time, therefore, the Government issued notification as per the proviso to Section 29(3) of the Indian Forest Act.

7. Thus, the contention of the learned counsel for the petitioner that during the pendency of the inquiry, the aforesaid notification has not been made, does not appear to be correct. Proviso to Section 29(3) gives power to the State Government for issuance of notification during the pendency of the enquiry. From perusal of Clause-3 of the notification under challenge, it is clear that the enquiry was pending, but the same has not been completed, therefore, the State Government thinks that during the pendency of the said enquiry the notification be issued. In view of the aforesaid facts and circumstances, I find no merit in this writ application. Accordingly, the same is dismissed.