
(2016) 01 JH CK 0143
In the Jharkhand High Court
Case No : W.P.(C) No. 2438 of 2014.

Mahendra Prasad Yadav

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 29-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Forest Act, 1927 — Section 33
Penal Code, 1860 (IPC) — Section 120B, 379, 411

Citation : (2016) 2 JBCJ 614 : (2016) 2 JCR 415 : (2016) 2 JLJR 278

Hon'ble Judges : Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : B. K. Sinha, and Saibal Mitra, Advocates, for the Appellant; Anil Kumar, J.C. to A.G, for the Respondent

Final Decision : Dismissed

Judgement

Shree Chandrashekhar, J. - Aggrieved by order dated 11.03.2014 in Revision Petition No. 02 Ban Muk. (C)- 06 of 2013, the present writ petition has been filed.

2. Briefly stated, a First Information Report being Herhanj P.S. Case No. 01 of 2011 was registered on 13.01.2011 under Sections 379, 411 and 120B IPC and under Section 33 of the Forest Act against the petitioner and others on the allegation that illegal coal was being transported on the Tractor bearing no. BR 15A-3461, the owner of which is the petitioner. The confiscation proceeding under section 52(4) of the Forest Act was initiated in which the petitioner filed his reply denying involvement of the Tractor in commission of a forest offence. Vide order dated 19.01.2012 in Confiscation Case No. 02 of 2011, the Authorised Officer-cum-Divisional Forest Officer, Latehar confiscated the seized Tractor. The Deputy Commissioner-cum-District Magistrate set-aside order dated 19.01.2012 on the ground that there are two contradictory reports of the forest officer and there is no independent witness to the occurrence. In Revision Petition No. 02 Ban Muk. (C)- 06 of 2013, the Principal Secretary, Department of Forest and

Environment however, quashed the order passed by the appellate authority.

3. Heard the learned counsel for the parties and perused the documents on record.

4. The learned counsel for the petitioner submits that in view of two conflicting reports of the forest officer, the prosecution failed to conclusively establish that Dumartand is a protected forest. Moreover, the Circle Officer in his report dated 09.11.2012 found that 0.43 acre land in Plot No. 525 in Khata No. 246 is recorded in the name of Ram Charitra Singh. The learned counsel further submitted that the petitioner has purchased the coal from Nilambar-Pitambar Coal Depo, Simalia Tola and during transportation it has been seized. Contending that there was no evidence that coal was illegally extracted from the reserved forest, the learned counsel for the petitioner submits that the revisional order is liable to be quashed.

5. Supporting the impugned order dated 11.03.2014 in Revision Petition No. 02 Ban Muk. (C)- 06 of 2013, the learned counsel for the respondents submits that the copy of the challan produced by the petitioner has been found forged and Chiru Forest has been declared protected forest.

6. Having considered the rival contentions raised on behalf of the parties and on perusal of the documents on record, I am of the opinion that the writ petition is liable to be dismissed. Though, it was contended before the Authorised Officer that the coal was purchased from Nilambar-Pitambar Coal Depo, Simalia Tola and during transportation it has been seized, the challan produced by the petitioner has been found forged. The plea based on two conflicting reports is also liable to be rejected. The reason for calling for a second report has been disclosed by the respondents. The forest officer in his report dated 27.07.2011 has reported that Chiru Forest is a protected forest. The fact that there is no independent witness to the occurrence would not discredit the evidence of the police witness. The finding recorded by the appellate authority that only the Mining Department can investigate the case though, immaterial for the purpose for adjudicating the order passed by the Authorised Officer, is patently erroneous. The offence alleged against the petitioner is under Sections 379, 411 and 120(B) IPC. The police has rightly lodged a First Information Report. Moreover, registration of a case by the police and the outcome of the criminal case would not materially effect the outcome of the confiscation proceeding. Reliance placed by the learned counsel for the petitioner on the decision in "Most. Dulia v. State of Jharkhand and Ors." 2009 (1) JCR 22 (Jhr.) and "Lalan Singh v. State of Jharkhand and Ors." 2009 (2) JCR 533 (Jhr.) is misplaced.

7. I find no merit in the writ petition and accordingly, it is dismissed.