
(1991) 10 PAT CK 0024

In the Patna High Court

Case No : Criminal Revision No. 263 of 1990 (R)

Prahlad Prasad @ Ladoo Sao

APPELLANT

Vs

The State of Bihar and another

RESPONDENT

Date of Decision : 10-10-1991

Acts Referred:

Bihar Forest Produce (regulation Of Trade) Act, 1984 — Section 18, 20, 5
Bihar Kendu Leaves (Control of Trade) Act, 1973 — Section 10, 14, 14(iv), 15, 16
Criminal Procedure Code, 1973 (CrPC) — Section 102, 103, 397, 401, 451
Forest Act, 1927 — Section 21
Penal Code, 1860 (IPC) — Section 120B, 379, 411, 413, 414

Citation : (1993) 2 PLJR 443

Hon'ble Judges : S. Hoda, J

Bench : Single Bench

Advocate : T.R. Bajaj, for the Appellant; S.N. Rajgarhia for the State, for the Respondent

Final Decision : Dismissed

Judgement

S. Hoda, J.—By this revision application under sections 397 and 401 of the Code of Criminal Procedure the petitioner has challenged the order dated 26.11.90 passed by the Additional Chief Judicial Magistrate, Latehar, Palamu in C.F. Case no. 155/00. By the said order, the learned court has refused to release 663 bags of kendu leaves which were seized from the godown of the petitioner and ordered for its sale by auction by the Forest Department. The prosecution case, in short is that the Range Officer, Latchar on the basis of search warrant issued by the Subdivisional Officer, Latchar on 22.7.90 searched the godown of the petitioner on 23.7.90 situated at Chandwa which is meant for the purpose of keeping kendu leaves and from which 663 bags of kendu leaves were seized. It was alleged that the said kendu leaves contained in 663 bags were of the year 1990 and since the forest department has not released leaves for the said year, they were illegally acquired from Latchar forest division, Dallonganj as well as from the forest division, Chatra. It was also alleged that neither owner of the

godown nor any person authorised by him produced any licence or necessary papers relating to the said leaves. It was also alleged that either the details mentioned in the label pasted on the bags were erased or attempts were made to remove the same. During the course of search, it also transpired that no transport licence was issued by the forest officials. On the basis of the aforesaid facts, it was alleged that the petitioner contravened the provisions contained in sections 33, 41, 42 and 52 of the, Indian Forest (Bihar Amendment, 1989) Act 1927, provisions contained in sections 8, 14 and 16 of the Bihar Kendu Leaves (Control of Trade) Act, 1973 (hereinafter referred to as the Act) and the provisions contained in sections 5, 18 and 20 of the Bihar Forest Produce Act, 1984 read with sections 379, 411, 413, 414 and 120B of the Indian Penal Code. The Range Officer on the basis of the aforesaid allegations filed a complaint before the Additional Chief Judicial Magistrate who registered the case as C.F. Case no. 155/90.

2. The petitioner filed an application before the Additional Chief Judicial Magistrate for the release of kendu leaves. On the other hand, the forest department also filed an application before the court that the kendu leaves in question should be auction sold and the proceeding of the same may be deposited in the Government treasury. The learned Additional Chief Judicial Magistrate after hearing the parties passed the impugned order dated 20.11.90 as mentioned above.

3. It has been contended by Mr. T.R. Bajaj, Learned Counsel appearing for the petitioner, that there is no material on the record to show that the seized kendu leaves are of the year 1990. The Range Officer has illegally seized the said leaves merely on ocular inspection that the said leaves are of the year 1990. It has been next contended that the court can direct the forfeiture of the seized kendu leaves u/s 16(2) of the Act only on conviction after conclusion of the trial. It has also been contended that the petition for release of the seized kendu leaves was filed u/s 451 of the Cr. P.C. and as such the Magistrate was competent to pass the release order. It was lastly contended that the provisions of the Forest Produce Act 1984 as well as Indian Forest Act 1927 are not applicable in this case.

4. On the other hand, Mr. S.N. Rajgarhia, Learned Counsel for the state has submitted that the petition filed by the petitioner for the release of kendu leaves before the Additional Chief Judicial Magistrate is u/s 457 and not 451 of the Code and as such not maintainable in law as the seizures have been made by the Range Officer who is not a police officer and hence the court has no jurisdiction u/s 457 of the Cr. P.C It has been further submitted that the Act is a special Act and is more or less a complete code in itself and the power to search, seize and release has been provided therein and as such the power under the Code of Criminal Procedure could not be exercised by the Magistrate.

5. Before dealing with the contentions of Learned Counsels for the parties, it will be useful to examine the relevant provisions of the Act. Section 3 of the Act gives

power to the State Government to make declaration of specified area and constitution of units by notification in the Official Gazette. Section 4 of the Act gives the power to the State Government to appoint agent for the purpose of purchase or sale of kendu leaves on its behalf. Section 5 of the Act lays down restriction of purchase or transport of kendu leaves which is as follows :

1. On the declaration of a specified area u/s 3, no person other than :

(a) the State Government

(b) an officer of State Government authorised in writing in that behalf, or

(c) an agent in respect of the unit in which the kendu leaves have grown, shall purchase kendu leaves from the grower in that area or transport the same.

Explanation I.- Purchase of kendu leaves from the State Government or its authorised officer or agent shall not be deemed to be a purchase in contravention of the provisions of this Act.

Explanation II. - A person holding no interest in the land who has acquired the right to collect kendu leaves grown on such land shall be deemed to have purchased such leaves in contravention of the provision of this Act.

(2) Notwithstanding anything contained in sub-section

(i)

(a) kendu leaves grown within a and may be transported by a grower from one place to another within the unit for purposes of collection, storage and sale; and

(b) kendu leaves purchased from the State Government or any officer or agent authorised in this behalf may be transported by the purchaser outside the units or the specified area in accordance with the terms and conditions mentioned in the permit to be issued by such authority as may be prescribed.

(3) A grower other than the State Government shall sell kendu leaves at any depot specially set up for this purpose within a unit. Section 6 of the Act deals with the constitution of Advisory Committee and section 7 gives power to the State Government to fix prices, etc. in consultation with committee. Section 14 deals with the power of entry, search, seizures etc. and it provides as follows :

(1) Any Police Officer not below the rank of an Assistant Sub-Inspector or any Forest Officer or any other person authorised by the State Government may with a view to securing compliance of the provisions of this Act or the rules made thereunder or satisfying himself that the said provisions have been complied with

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(i) stop and search any person, boat, vehicle or receptacles used or intended to be used for transport of kendu leaves;

(ii) enter and search any place and survey, demarcate and make a map of any

land;

(iii) seize kendu leaves in respect of which he suspects that any provision of this Act or the rules made thereunder had been, is being or is about to be contravened, along with the receptacle containing such leaves, or the vehicles or boats used in carrying such leaves;

(iv) sell by public auction kendu leaves seized under clause (iii) and deposit the sale proceeds thereof in Government Treasury, if he is satisfied that the said kendu leaves are subject to speedy and natural decay :

Provided that the auction shall be conducted by a Forest Officer not below the rank of an Assistant Conservator of Forests.

(2) The provisions of sections 102 and 103 of the Code of Criminal Procedure, 1898 (V of 1898), relating to search and seizure shall, so far as may be, apply to search and seizure under this section.

Section 15 of the Act gives power to the Forest Officer to hold enquiry and it reads as follows :

(1) A Forest Officer not below the rank of a Ranger or such other officer as may be authorised by the State Government in this behalf hold an enquiry into offences relating to any contravention of any provision of this Act and in the course of such enquiry, receive and record evidence.

(2) Any evidence recorded under sub-section (1) shall be admissible in any subsequent trial before a Magistrate :

Provided that such evidence has been recorded in the presence of the accused person.

Section 16 provides for penalty and it is as follows :

(1) Any person who contravenes any of the provisions of this Act, shall be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees or with both.

(2) The whole of kendu leaves in respect of which such contravention has been made or such part thereof as the court may deem fit or sale-proceeds thereof, as the case may be, shall be forfeited to the State Government: Provided that if the court is of the opinion that it is not necessary to direct forfeiture in respect of the whole or part of the kendu leaves or the sale-proceed thereof, as the case may be, it may, for reasons to be recorded in writing direct the same to be made over to the person whom the court deems to be entitled to the same.

Section 21 bars the application of provision of the Indian Forest Act, 1927 which says that nothing contained in the Indian Forest Act, 1927 (No. 16 of 1927) shall apply to kendu leaves in respect of matters for which provisions are contained in this Act.

6. From perusal of the provisions noticed above, it is evident that the purchase has to be made either from the State Government or an officer of the State Government duly authorised or an agent appointed by the State Government. It will also be evident from the provisions contained in section 14 that the kendu leaves in respect of which it is suspected that any provision of the Act or rules made thereunder has been contravened can be seized and such seized kendu leave can be sold at public auction by a Forest Officer not below the rank of Conservator of Forests and the sale proceeds thereof are to be deposited in the Government Treasury. It is also evident that by way of penalty either kendu leaves in respect of which contravention has been made or the sale proceeds thereof shall be forfeited to the State Government. Power has also been given to the court either to release kendu leaves or sale proceeds thereof whom the court deems to be entitled to the same if in the opinion of the court, it is not necessary to direct forfeiture in respect of whole or part of kendu leaves or sale proceeds thereof. Thus, there is no provision to direct for release of the seized kendu leaves in favour of a person claiming possession thereof before the conclusion of the trial.

7. Learned Counsel appearing for the petitioner has submitted that the provision of the Bihar Forest Produce (Regulation of Trade) Act, 1964 is not applicable in the present case in view of the definition of Forest Produce contained in section 2 clause 4 of the said Act. Forest produce has been defined as follows :

"Forest produce" means any forest produce as specified in the Schedule (hereinafter called the specified forest produce).

The schedule appended to the said Act contains different items and under the item leaves only Mahua and Sal are included. Kendu leaves are not specified in the schedule. It has been further contended that even the provisions of the Indian Forest Act are not applicable in the fact and circumstances of the case as section 21 of the Act bars the application of the Indian Forest Act and from a bare perusal of the provision contained in section 21 of the Act, it will appear that the provisions contained in Indian Forest Act are excluded only in respect of the matters for which provisions are contained in the Act. Whether the provisions of Forest Act or Bihar Forest Produce (Regulation of Trade) Act are applicable or not is a matter to be considered by the trial court.

8. Now the question falls for consideration is whether an application u/s 451 or section 457 of the Code of Criminal Procedure for release of the seized kendu leaves was maintainable before the Additional Chief Judicial Magistrate and whether the impugned order suffers from any error on part of laws so as to warrant an interference by the High Court under its revisional jurisdiction?

9. Section 451 of the Code of Criminal Procedure provides that when any property is produced before any criminal court during an inquiry or trial, the court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is

subject to speedy and natural decay, or it is otherwise expedient so to do the court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of. Thus the provision contained in section 451 enables the court to pass orders for the custody or disposal of property during an inquiry or trial. If the stage for an enquiry or trial is not reached the provision of this section will not apply. In the present case, it has been urged by the Learned Counsel for the State that at the time when the impugned order was passed the stage of enquiry or trial had not reached and as such the court could not have released the seized kendu leaves. Learned Counsel for the petitioner on the other hand, submitted that once the Magistrate takes cognizance of the offence the stage for enquiry commences. In other words before the cognizance of an offence is taken by the Magistrate, the stage for enquiry does not reach. In order to substantiate his contention the Learned Counsel for the petitioner submits that the cognizance was taken on 24.7.90 when the learned Additional Chief Judicial Magistrate perused the offence report, seizure list and seizure report and issued warrant of arrest (non-bailable) against the accused person. The Learned Counsel for the State on the other hand submits that no cognizance of the offence was taken on 24.7.90 and in fact the learned Additional Chief Judicial Magistrate took cognizance of the offence on 23.2.91 when the learned Additional Chief Judicial Magistrate on perusal of the prosecution report found a prima facie case made out against the petitioner, took cognizance of the offence and issued process against the petitioner. The contention of the Learned Counsel for the State appears to be correct. By perusal of the offence report and issue of warrant of arrest, it cannot be said that the Magistrate has applied his mind for the purpose of proceeding under the provisions of Chapter XVI of the Cr. P.C. and as such he cannot be said to have taken cognizance of the offence. Taking cognizance is a judicial Act and a Magistrate is said to have taken cognizance of an offence when he applies his mind and first takes judicial notice of an offence. In the present case prior to the passing of the impugned order cognizance of the offence was not taken and as such the stage of enquiry or trial had not reached. Moreover, the trial starts when the charge is framed. Thus the learned Additional Chief Judicial Magistrate could not have ordered the release of kendu leaves.

10. Learned Counsel for the State has also submitted that even the petition for release of kendu leaves could not be entertained u/s 457 of the Cr. P.C. Section 457 is as follows :

Procedure by police upon seizure of property.- (1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code and such property is not produced before a criminal court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof or if such person cannot be ascertained respecting the custody and production of such property.

(2) If the person so entitled is known the Magistrate may order the property to

he delivered to him on such conditions (if any) as the Magistrate thinks fit, and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

For the application of section 457, it is necessary that the seizure must be by a police officer. In the present case the seizure was made by a Range Officer who is not a police officer. Hence no application u/s 457 for release of kendu leaves could be entertained by the Additional Chief Judicial Magistrate.

11. The next submission of the Learned Counsel for the petitioner is that there is no evidence to show that the leaves which were seized were of the year 1990. In my view, it is a question of fact which can be ascertained on the basis of evidence and at this stage no finding can be given with regard to the year to which the kendu leaves belong.

12. This being a revision application no glaring defect in the procedure or any manifest error on point of law has been pointed out which has caused flagrant miscarriage of justice. Unless there is some substantial error of law the High Court will not interfere in its revisional jurisdiction.

13. Section 14(iv) of the Act clearly gives power to a Forest Officer not below the rank of Assistant Conservator of Forest to sell by public auction kendu leaves seized under clause (iii) and deposit the sale proceeds thereof in Government Treasury, if he is satisfied that the said kendu leaves are subject to speedy and natural decay.

14. In the present case, the learned Additional Chief Judicial Magistrate has directed the Conservator of Forest to form a committee of officers for the sale of the seized kendu leaves by public auction and deposit it in Government Treasury. Section 10 of the Act gives power to the court to order for forfeiture of the kendu leaves in respect of which such contravention has been made. In the light of discussions made above, I am not inclined to interfere with the impugned order and direct for release of kendu leaves. In the result, this revision application is dismissed.