

(2015) 03 AHC CK 0134

In the Allahabad High Court

Case No : Criminal Misc. Application No. 7468 of 2015

Prem Narain Singh

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 26-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 2(n), 4, 457

Uttar Pradesh Protection of Trees Act, 1976 — Section 10, 14, 15, 15(2), 4

Citation : (2015) 2 ACR 1927 : (2015) 4 ADJ 573 : (2015) 5 ALJ 139

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Ram Mani Upadhyay and Vikrant Pandey, for the Appellant

Final Decision : Disposed off

Judgement

Manoj Misra, J.

1. Heard learned counsel for the applicant, learned A.G.A. for the State and perused the record.

Considering the nature of the prayer made in the application as also the order that is being passed, the learned A.G.A. neither prays for time to file counter-affidavit nor the same is required as the order is being passed purely on a legal question.

From the record it appears that the applicant, for cutting a green tree, was made an accused of an offence punishable under Section 4/10 of U.P. Protection of Trees Act, 1976, which was registered as Case Crime No. 1542 of 2014 at P.S. Dubauliya, District Basti and the timber was seized. As the offence was compound-able, the applicant deposited certain amount and moved an application for compounding as a consequence thereof the police submitted a final report on 30.12.2014, which is yet to be accepted. In the meantime, the applicant applied to the concerned Magistrate for release of the timber.

2. By the impugned order dated 20.2.2015, the Court of Judicial Magistrate-II (Court No. 13), Basti rejected the application of the applicant on the ground that the power to release under sub-section (2) of Section 14 of the U.P. Protection of Trees Act, 1976 is not available where the investigation is pending. It took the view that since till date the final report has not been accepted, the Court has no power to pass orders on the application seeking release of the timber.

3. The learned counsel for the applicant submitted that the view taken by the Court below is not in consonance with law, inasmuch as, the jurisdiction to release or not to release the goods seized is derived by the concerned Magistrate on receipt of a seizure report under sub-section (2) of Section 14 of the U.P. Protection of Trees Act, 1976 and not on acceptance of a final report or closure report.

To appreciate the aforesaid submission of the learned counsel for the applicant it would be useful to examine the provisions of Section 14 and Section 15 of the U.P. Protection of Trees Act, 1976, which provide as follows:

"14. Power of Seize--(1) When there is reason to believe that any tree has been felled or cut to remove in contravention of the provisions of this Act, the wood of such tree, together with boat, vehicle carrier or cattle, if any used in such contravention may be seized by any forest officer not below the rank of a Forest Ranger or any police officer not below the rank of Sub-Inspector or any other person empowered in this behalf by the State Government.

(2) Every seizure under this section shall be reported to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made, and such timber, boat, vehicle carrier or cattle shall, subject to the order of such Magistrate, be disposed of in the prescribed manner.

(3) Any Forest Officer or Police Officer who vexatiously and unnecessarily arrests or seizes any property on pretence of such property being liable to forfeiture under this Act shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both.

15. Power to compound offences.--(1) The State Government may, by notification authorise any officers to accept from any person against whom there is reason to believe that he has committed offence under the Act in respect of any tree other than a tree situate in a forest, grove or public premises, such sum of money not exceeding Rs. 5000 by way of composition for the offence which such person is suspected to have committed.

(2) On payment of such money to any such officer, the suspected person if in custody, shall be released and no further proceedings under this Act shall be taken against such person and notwithstanding anything contained in Section 14, such officer may on payment of such amount, not exceeding five thousand rupees as he may in the circumstances of the case think fit, release the property

seized under this Act."

4. A perusal of the provisions of Section 14 would go to show that under sub-section (1) of Section 14 there is a power of seizure given to certain specified officers on fulfillment of certain conditions. Under sub-section (2) it is required that such seizure is to be reported to the magistrate having jurisdiction to try the offence. Sub-section (2) of Section 14 further provides that subject to the order of such magistrate the goods seized are to be disposed of in the prescribed manner. There is nothing in sub-section (2) of Section 14 which may lead to an inference that the magistrate cannot pass an order of release unless and until it passes an order of acquittal or it passes an order accepting final report. The power of the Magistrate to release the goods seized flows from the provisions of Section 457 of the Code of Criminal Procedure, 1973 upon receipt of the seizure report. There is nothing in the U.P. Protection of Trees Act, 1976 which may take away the power of the Magistrate conferred upon by him Section 457 of the Code to release the goods. It would be useful to observe that by virtue of sub-section (2) of Section 4 of the Code of Criminal Procedure all offences under any law are to be investigated, inquired into, tried, and otherwise dealt with according to the provisions of the Code unless provided otherwise by any enactment dealing with such offences. Even Section 2(n) of the Code defines "offence" as any act or omission made punishable by any law for the time being in force. Thus, there is no shadow of doubt that the magistrate to whom seizure of timber is reported in respect of an offence under the provisions of U.P. Protection of Trees Act, 1976 is empowered under Section 457 of the Code to release the same.

5. Section 15(2) of the U.P. Protection of Trees Act, 1976 confer power on an authorized officer to release the property where the offence is compounded thereunder. However, Section 15 does not take away the power of a Magistrate available to him under Section 457 Cr.P.C. In view of the above, the view taken by the learned magistrate that since final report has not yet been accepted, therefore, he has no power to entertain and pass orders on the application seeking release is not legally justified. The order dated 20.2.2015 is, therefore, set aside. The learned magistrate will pass a fresh order on the release application in the light of the observations made herein above after giving opportunity of hearing to the State.

With the aforesaid observations/directions, the application stands disposed of.