

(1984) 07 GAU CK 0006
In the Gauhati High Court
Case No : Criminal Revision No. 132/78

Ramesh Choudhury

APPELLANT

Vs

Shri Narayan Chandra Bhuyan and Another

RESPONDENT

Date of Decision : 10-07-1984

Acts Referred:

Assam Forest Act, 1891 — Section 34, 35, 40, 41
Criminal Procedure Code, 1973 (CrPC) — Section 468(2), 470, 470(3)

Citation : (1985) 1 GLR 39

Hon'ble Judges : B.L. Hansaria, J

Bench : Single Bench

Advocate : A.K. Bhattacharyya and A.K. Das, for the Appellant; P.C. Gayan, Public Prosecution, for the Respondent

Final Decision : Allowed

Judgement

B.L. Hansaria, J.—The Petitioner is in timber business and hold the Degree of Bachelor of Mechanical Engineering (B.M.E.). He claims that he occupies a position of status in society and it is because of this that this prosecution against him under Sections 34 and 35 of the Assam Forest Regulation, 1891 for short, the Regulation, has brought him into this Court for getting it quashed as, according to him, even if the allegation in the offence report is taken in its entirety no offence was committed by him, This apart, another main ground of attack is that the cognizance of the case was taken beyond the period of limitation mentioned in Section 468(2)(b) of the Code of Criminal Procedure, 1973.

2. In so far as the first submission is concerned, Shri Bhattacharyya has taken me through the offence report which shows the place of occurrence as "Mairapur Grant". In the body of the report also it is stated that on 5.12.75 the two Forest Guards named therein having gone to Mairapur Grant found 8 (eight) Nos. of Sal trees having been removed by some body. When the Petitioner was asked about the same he is said to have submitted his statement in writing. A reference to

that statement, a copy of which is at Annexure. III at page 27 and is dated 3.12.75, shows that the Petitioner has sought permission to allow his representative Rajat Chandra Das to clear some small Sal trees amongst others which he had grown or cultivated on the portion of land in Mairapur Fee Simple Grant. The contention, therefore, is that the Sal trees which, were found removed by the Forest Guard) had been grown on the Grant which had been given to the predecessor-in-interest of the Petitioner. The learned Public Prosecutor has conceded that if the Sal trees were those which were grown on the Grant land of the Petitioner, it could not be said that any offence was committed by him. The contention rather is that the Sal trees had been grown on a reserve forest, or on any land at the disposal of the Government, It is further submitted that this aspect would come out clearly when the evidence in the case would be led. But then a reading of the offence report which is the basis of the prosecution case does not at all indicate that the Sal tree had been removed from any land at the disposal of the Government or any reserve forest. It is the admitted position in law that if the offence reports itself does not make out a case against the accused, he is entitled under the law to pray for quashing of the proceeding.

3. In so far as the limitation is concerned, it is the admitted position that the offence had come to knowledge on 5.12.75 and as per the affidavit-in-opposition of the opposite parties, the offence had been first reported to the learned Chief Judicial Magistrate on 6.12.75, The case was, however, kept pending as the accused-Petitioner agreed to compound the offence by paying compensation of Rs. 717.14. But as the Petitioner did not do so ultimately the offence report was forwarded to the learned Chief Judicial Magistrate on 11.5.77, It is, therefore, contended by Shri Gayan, learned Public Prosecutor, Assam that the period from 6.12.75 to 11.5.77 has to be excluded from the period of one year mentioned in this regard in Section 468(2)(b) Code of Criminal Procedure This exclusion is claimed u/s 470 Code of Criminal Procedure According to the learned Public Prosecutor, under Sub-section (3) of that section exclusion of the aforesaid period on the ground stated above is permissible. A reading of that Sub-section, however, shows that that operates when previous consent or sanction of the Government or any authority is required for institution of any prosecution. Nothing has been brought to my notice by the learned Public Prosecutor to show that for prosecuting the Petitioner under Sections 34 and 35 of the aforesaid Regulation, or for that matter under Sections 40 and 41 any previous sanction or content of the Government or any other authority is required under the law. The period claimed by the opposite party cannot therefore be excluded under Sub-section (3), or for that matter, under any other Sub-section of Section 470, As cognizance of the case was taken admittedly on 30.5.77, the same was apparently beyond the period of one year, even if the same is counted from 29.12.75 which to the date on which the offence was reported by the Forester to the Divisional forest Officer.

4. This being the position, I am satisfied that it is a fit case where the proceeding

should be quashed. Accordingly the petition is allowed by quashing the proceeding.