
(2003) 07 JH CK 0110
In the Jharkhand High Court
Case No : Writ Petition (Cr.) No. 55 of 2003

Ranjan Kumar Mishra

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 16-07-2003

Acts Referred:

Bihar Saw Mills (Regulation) Act, 1990 — Section 10, 14, 24
Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 468(3), 470(3)

Citation : (2004) CriLJ 547 : (2004) AIR Jhar HCR 125 : (2003) 3 JCR 582 :
(2003) 3 JLJR 636

Hon'ble Judges : Vikramaditya Prasad, J

Bench : Single Bench

Advocate : Sameer Saurav, for the Appellant; R.R. Mishra, APP, for the Respondent

Final Decision : Allowed

Judgement

Vikramaditya Prasad, J.—The question to be answered in this writ petition is whether a proceeding under the Bihar Saw Mills (Regulation) Act, 1990. (hereinafter referred to as the Act) can be quashed when the final report against the offender u/s 10 of the Act has been submitted after 2 years and 4 months of the receipt of the seizure list by the Sub-divisional Judicial Magistrate? Another question requires to be answered is whether Section 468(3), Cr PC is applicable in the circumstances of the case?

2. The questions aforesaid arose out of the facts that the petitioner has filed this writ petition for quashing the order dated 16.8.2001 taking cognizance u/s 10 of the Act against the petitioner in Forest Case No. F 9/99, T.R. No. 898/2001, pending in the Court of Shri D. Burnwal. Judicial Magistrate, 1st Class, Khunti. Some properties of the petitioner, which were found to be in contravention of Section 10 of the Act, were seized and reported to the S.D.J.M. on 9.3.1999. Thereafter on 16.8.2001, the final offence report was submitted against the

petitioner in the Court and the cognizance was taken on that very date and the case was transferred to the Magistrate. Subsequently it transpires that the Magistrate, to whom the case was made over issued summons to the petitioner and the petitioner appeared and contested the matter of taking cognizance and consequently prayed that the trial should not be proceeded against him. The learned Magistrate refused the prayer of the petitioner, employing Section 470(3), Cr PC.

3. Admittedly, the information of the offence was sent to the S.D.J.M. on 9.3.1999 and the final form was submitted on 16.8.2001. Thus, the offence was detected on 9.3.1999 and the cognizance was taken on 16.8.2001. There has been a delay of 2 years and 4 months in taking cognizance. The learned cognizance taking Court has not passed any order with regard to the period of limitation. u/s 14 of the Act, the penalties are provided and it provides a punishment of one year and in a case of subsequent offences, the minimum imprisonment will be three months or fine.

4. The learned counsel appearing for the petitioner has argued that since the prescribed punishment is only one year and cognizance has been taken after 2 years and 4 months, taking of cognizance is barred by limitation as per Section 468, Cr PC.

5. This matter was raised before the learned trial Court. The learned trial Court passed the following order :--

"So I find that cognizance of such offence is not time barred. I also find that letter to Ranger, Khunti, by Paduman Singh Munda is undated, contains only Thumb Impression not identified by any person, contains only Thumb Impression not identified by any person, there is no endorsement to the effect that contents are true as per the version of Padhuman Singh Munda. The letter to Ranger Kunti by the accused petitioner, is also undated and do not show any receiving by the Ranger Kunti or any other person authorized on his behalf. So I find that genuineness of both documents are doubted."

The question is whether this provision of the Code of Criminal Procedure will apply and whether the reasoning given by the learned Magistrate for rejecting the prayer of the petitioner is according to law. Section 24 of the Act reads as follows :--

"24. Other Act and laws not to apply to saw mill or saw pit.--Nothing contained in any other Act, or law, rule, order or any other thing having a force of law in any area of the State shall apply to the saw mill and saw pit and sawing in respect of matters for which provisions are contained in this Act."

In the entire Act, there is no provision with regard to limitation. Consequently, the provisions with regard to limitation as contained in the Code of Criminal Procedure becomes applicable in respect of the offences under this Act. No section of the Act provides for obtaining sanction/consent from the competent

authority for filing the final offence report. But the learned Magistrate says that the time of 2 years and 4 months was consumed in obtaining the sanction from the competent authority.

6. I now proceed to examine whether this reasoning given by the learned Magistrate is valid and legal. Section 470(3), Cr PC reads as follows :--

"470(3) Where the institution of prosecution for an offence has been given, or when, under any law for the time being in force, the previous consent, or sanction of the Government or any other authority is required for the institution of any prosecution for an offence, then, in computing the period of limitation, the period of such notice, or, as the case may be, the time required for obtaining such consent or sanction shall be excluded.

Explanation.--In computing the time required for obtaining the consent or sanction of the Government or any other authority, the date on which the application was made for obtaining the consent or sanction and the date of receipt of the order of the Government or other authority shall both be excluded."

One phrase in this section that "where, under any law for the time being in force, the previous consent, or sanction of the Government or any other authority is required" is most important. So if there is any requirement of law for sanction/consent by the Government or any other authority, then if it is found that the time was consumed in meeting this legal requirement, then that time has to be excluded. As stated above, under the Act, no requirement of sanction/consent is there. Therefore, this sanction/consent was not required under any provision of the Act. Consequently, even if the matter remained pending with the D.F.O. for his consent for filing the prosecution report, this pendency cannot be said to be the time consumed for obtaining the sanction/consent for the simple reason that the sanction/consent was not necessary under the Act. This aspect of the matter was not considered by the learned Magistrate and it appears that the learned Magistrate misconstrued the pendency period and the permission of the D.F.O. with the requirement of law.

7. In the aforesaid circumstances, as the punishment is only of one year and cognizance has been taken after 2 years and 4 months and as the exclusion of this period is not based on any sound legal proposition, the cognizance taken by the order impugned is bad and cannot continue. The writ petition is allowed and the order impugned in this petitioner is quashed.