

(1989) 09 OHC CK 0030

In the Orissa High Court

Case No : Government Appeal No. 101 of 1982

State

APPELLANT

Vs

Sahadev Dalal

RESPONDENT

Date of Decision : 26-09-1989

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 468(2), 468(2)(3)
Orissa Forest Act, 1972 — Section 2, 27, 27(2), 27(3)

Citation : (1990) CriLJ 1581 : (1990) 3 OCR 59 : (1989) 2 OLR 441

Hon'ble Judges : K.P. Mohapatrah, J

Bench : Single Bench

Advocate : P.K. Mohanty, for the Appellant; R.K. Kar, for S.K. Nayab-I, for the Respondent

Final Decision : Allowed

Judgement

K.P. Mohapatrah, J.—This appeal is directed against the judgment passed by the learned Judicial Magistrate, Nayagarh, acquitting the respondent of an offence punishable u/s 27 of the Orissa Forest Act, 1972 (shortly stated "the Act").

2. Prosecution case, in brief, is that on 23-9-1979 at about 5.00 P.M., P.Ws. 1 and 2. both Forest Guards, were patrolling compartment No. 7 of Hatimunda Reserved Forest. They detected that the respondent was unauthorisedly carrying away a green Sal log of the size of 13" x 3"-10" in a bullock-cart from the said forest. They seized the log by seizure list (Ext. 1) and gave it to the zima of P. W. 4 by zimanama (Ext. 2). The bullock-cart and the bullocks could not be seized because the respondent forcibly took them away. P. W. 1 submitted an offence report (Ext. 3) and the Forester (P. W. 3) made an enquiry and submitted the prosecution report.

3. The respondent denied the occurrence.

4. On a consideration of the prosecution evidence, the learned Magistrate found as follows:--

".....I find that though the evidence of the forest department people is not false, the case is barred by limitation as the offence report is instituted against the accused on 23-9-1979 and the cognizance was taken on 17-9-1980 which is after more than six months, and it is a case u/s 27(2) of the Orissa Forest Act and the accused is punishable only with fine. The cognizance should have been taken within the six months according to Section 468(2)(3), Cr. P.C."

Be it noted that the order of acquittal was recorded only on the ground of bar of limitation and not on the merits of the case.

5. Mr. P.K. Mohanty, learned Addl. Govt. Advocate, contended that the case was u/s 27(3)(b) of the Act and as such, the period of limitation is three years u/s 468(2)(c), Cr. P.C. Accordingly, the order of cognizance was not barred by limitation.

Mr. R. K. Kar, learned counsel appearing for the respondent, on the other hand, urged that the case squarely falls within the ambit of Section 27(2)(b) of the Act and, therefore, the period of limitation is six months, as provided in Section 468(2)(a), Cr. P.C.

The contentions require careful consideration.

6. Section 27(2)(b) is quoted below for easy reference:--

"(b) causes any damage by negligence in felling any tree or cutting or dragging any timber or removing any forest produce."

If an offence falls within the aforesaid provision, then the punishment is only fine which may extend to Rs. 1,000/ -. It is also necessary to quote Sub-section (3) of Section 27 of the Act, so far it is relevant:--

"(a) xxx xxx

(b) quarries stone, burns lime or charcoal or collects, subjects to manufacturing process or removes any forest produce;

xxx xxx xxx"

If any offence falls within the aforesaid provision, then the punishment is imprisonment which may extend to two years or fine, prior to its amendment by Orissa Act 9 of 1983.

7. The simple case against the respondent is that he was found removing a timber. There is no allegation against him that he caused any damage to the reserved forest by felling the tree. May be somebody else caused damage by felling the tree, but he was simply found removing it from the reserved forest. P. Ws. 1 and 2 stated in their evidence that they found the respondent transporting and removing the Sal log in the reserved forest. They did not state that the respondent himself felled the tree either deliberately or on account of negligence and thereby caused damage to the reserved forest. To my mind, it appears that Clause (b) of Sub-section (2) of Section 27 lays emphasis on causing damage by

negligence and thereby removing any forest produce. In other words, if a person is found removing any forest produce by causing any damage by negligence in felling any tree, he can be said to have committed an offence thereunder. But in this case the respondent was found removing the forest produce, i.e., the Sal log, which, according to the definition in Section 2(g)(i)(a), is forest produce. When he was found in the reserved forest removing the Sal log, which is timber, he can well be said to have committed an offence covered by Clause (b) of Sub-section (3) of Section 27. In other words, the respondent in the reserved forest was found removing a forest produce. In my opinion, therefore, there was a prima facie case against the respondent u/s 27(3)(b) of the Act. The punishment for the offence being imprisonment extending to two years, the period of limitation is three years u/s 468(2)(c), Cr. P.C. The order of cognizance was, therefore, within limitation. The learned Judicial Magistrate, therefore, committed an error of law in holding that the order of cognizance was barred by limitation.

8. The learned Magistrate disposed of the criminal case on the ground of limitation only and not on merits on consideration of the evidence. Therefore, it is necessary to remand the case to him for re-trial. While doing so, he shall record his finding on the evidence already recorded without permitting any of the parties to adduce any further evidence. In formulating his opinion, he shall not be influenced by any of the observations made by this Court.

9. In the result, the appeal is allowed and the order of acquittal is set aside. The criminal case is remanded to the Court of the learned Magistrate for re-trial in accordance with law in the light of the observations made above. The parties shall appear in the said Court to receive direction on 16th October, 1989.