

(1998) 05 SHI CK 0017
In the High Court Of Himachal Pradesh
Case No : Criminal Appeal No. 88 of 1997

State of Himachal Pradesh	Vs	APPELLANT
Gagan Singh and Others		RESPONDENT

Date of Decision : 13-05-1998

Acts Referred:

Constitution of India, 1950 — Article 20(1)
Criminal Procedure Code, 1973 (CrPC) — Section 173, 378, 468, 468(1)
Forest Act, 1927 — Section 41, 42

Citation : (1998) 2 ShimLC 231

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : R.C. Sharma, Asstt. Advocate General, for the Appellant; Rahul Mahajan, Ajay Kumar and N.D. Sharma for Respondent Nos. 1 and 3, for the Respondent

Final Decision : Dismissed

Judgement

R.L. Khurana, J.—By virtue of present appeal, preferred u/s 378, Code of Criminal Procedure, the State has assailed the acquittal of the Respondents of the offence u/s 41/42 of the Indian Forest Act as applicable to the State of Himachal Pradesh, recorded by the learned Additional Chief Judicial Magistrate, Nurgpur, vide judgment dated 8.12.1995, in Criminal Case No. 32-II of 1992.

2. Though the Respondents except Respondent Gagan Singh were found guilty of the offence punishable u/s 42 of the Indian Forest Act as applicable to the State of Himachal Pradesh, the learned Magistrate proceeded to acquit the Respondents on the ground of limitation u/s 468 of the Code of Criminal Procedure. The learned Magistrate came to the conclusion that since the cognizance of the offence was taken after the expiry of the period of limitation meant u/s 468, Code of Criminal Procedure, the proceedings against the Respondents were bad.

3. Admittedly, the offence in the present case is alleged to have taken place on

22.10.1989. After completion of the investigation, the final report u/s 173, Code of Criminal Procedure, was presented to the court on 31st December, 1991. The Magistrate took cognizance of the offence against the Respondents on 7.1.1992. The learned Assistant Advocate-General while assailing the findings of the learned Magistrate as to the limitation has contended that though initially the offence punishable u/s 42 of the Indian Forest Act was punishable with imprisonment up to six months, by virtue of amendment made to Section 42 of the Indian Forest Act by the State of Himachal Pradesh vide Indian Forest (Himachal Pradesh Second Amendment) Act, 1991, the offence u/s 42, Indian Forest Act has been made punishable with imprisonment up to two years w.e.f. 9.7.1991. It has further been contended that since the offence u/s 41/42 of the Indian Forest Act as applicable to Himachal Pradesh is now punishable with imprisonment up to two years, the period of limitation for taking cognizance of the offence would be three years within the meaning of Clause (c) of Section 468(1), Code of Criminal Procedure. Since the cognizance of the offence in the present case was taken by the learned Magistrate within the said prescribed period of three years, the learned Magistrate had erred in holding the case to be time-barred.

4. As stated above, the offence u/s 41/42 of the Indian Forest Act is alleged to have been committed by the Respondents on 22.10.1989. Article 20(1) of the Constitution of India provides:

No person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence, nor be subjected to penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

5. "Law in force" in Article 20(1), quoted above, postulates the factual existence of the law at the relevant time and it excludes retrospective application of any subsequent law.

The law as in force, as on the date of commission of alleged offence by the Respondents, prescribed the imprisonment for a period up to six months. Even though the punishment prescribed for the offence came to be enhanced to two years vide State Amendment Act of 1991, upon conviction the Respondents could not have been sentenced for a period of more than six months in view of provisions contained in Article 20(1) of the Constitution of India. Therefore, the period of limitation in the present case will have to be reckoned in accordance with punishment prescribed under the law as in force as on the date of commission of the offence, that is, 22.10.1989.

Considering the period of imprisonment of six months as prescribed under the law as on the date of commission of offence, the period of limitation for the present case would be one year and since the cognizance of the offence has been taken by the learned Magistrate much after the expiry of period of limitation prescribed under the law, the learned Magistrate has rightly come to the

conclusion that the cognizance was wrongly taken and the proceedings stood vitiated. Such findings of the learned Magistrate do not call for any interference. The Respondents stand rightly acquitted of the offence charged against them.

6. Resultantly, the present appeal fails and the same is accordingly dismissed. The bail bonds of the Respondents 1 to 3 stand cancelled and discharged. Respondent No. 4 who is in custody in the present case shall be released forthwith, if not required in any other case.