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**(2005) 07 OHC CK 0026**  
**In the Orissa High Court**  
**Case No : Govt. Appeal No. 45 of 1986**

State of Orissa

APPELLANT

Vs

Sri Rajib Pradhan

RESPONDENT

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**Date of Decision :** 15-07-2005

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 313  
Orissa Forest Act, 1972 — Section 27, 45, 46

**Citation :** (2005) 100 CLT 255 : (2005) 2 OLR 352

**Hon'ble Judges :** P.K. Tripathy, J

**Bench :** Single Bench

**Advocate :** A.K. Mishra, SC, for the Appellant; B.P. Ray and C.P. Patnaik, for the Respondent

**Final Decision :** Allowed

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## Judgement

P.K. Tripathy, J.—Perused the affidavit filed by the Assistant Conservator of Forests, Kalahandi North Forest Division, Bhawanipatna.

2. Heard further argument and the Government appeal is disposed of in the following manner.

3. Respondent was prosecuted for the offence u/s 27 read with Section 46 (though incorrectly stated to be under Sections 27, 45 and 46) of the Orissa Forest Act, 1972 (in short "the Act") on the allegation that he illegally cut and removed trees without prior permission and Timber Transit Permit. Prosecution examined three witnesses and out of them P.W. 3 deposed that the accused-respondent was found cutting the trees at the time of spot verification by the police and forest officials and that though the accused showed some papers but the forest officers said that he (accused) would be prosecuted. P.W. 3 also admitted that a complaint case lodged by the brother of the accused was pending against the Forester. Accused, in his defence, has not challenged to the aforesaid evidence of P.W. 3. Besides that, in his statement u/s 313, Cr.P.C. he has not disputed to the allegation of cutting of the trees. He has explained that

he showed his documents, but the forest officials did not accept the same and informed him to prosecute because brother of the accused had instituted a case against him. Accused did not adduce any defence evidence in support of the plea of the Forester facing a criminal prosecution on the complaint of the brother of the accused or that the accused had the requisite permission from the Forest Officer u/s 45 of the Act either to fell the trees or to remove the timber. Notwithstanding that, presuming from the aforesaid evidence of P.W. 3 Learned S.D.J.M., Dharamgarh as per the impugned judgment delivered on 29.5.1986 acquitted the accused on the ground that the case was instituted against the accused on the grudge of a criminal case being lodged against him by his brother.

4. Even if it is accepted on record for the sake of discussion that the officer was facing a criminal prosecution on the complaint of the brother of the accused, that does not authorize the accused to fell trees by making a breach of Section 27 and 45 of the Act. Since the accused has not disputed to the evidence on record that he felled the trees, therefore, when he has not produced any document in support of the proof that he had requisite permission to cut and remove the trees, therefore the evidence available on record was sufficient to find the accused guilty of the offence u/s 27 of the Act and breach of the provision u/s 45 punishable u/s 46 of the Act.

5. Under such circumstance, this Court sets aside the order of acquittal and convicts the accused-respondent u/s 27 and 46 of the Act. By the time of prosecution the accused was 42 years old and by now he is in the sixties. Thus, taking a liberal view this Court imposes a fine of Rs. 100/- (rupees one hundred) for each of the aforesaid two offences and also directs for confiscation of the seized wood to the State. On default in payment of the aforesaid fine amount, the accused-respondent shall suffer simple imprisonment for 15 (fifteen) days on each count.

The Government Appeal is accordingly allowed.