

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

561-A Cr.P.C No. 119/2007

Cr.M.P No. 120/2007

Date of decision:18.05.2010

Khem Raj	Vs.	State and anr.
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Coram:

MR. JUSTICE J. P. SINGH, JUDGE.

Appearing Counsel:

For the Petitioner(s)	:	Mr.Anil Sethi, Advocate.
For the Respondent(s)	:	Mr. Gagan Basotra, AAG.

Whether approved for reporting in Press/Journal/Media	:	Yes/No
Whether to be reported in Digest/Journal	:	Yes/No

Found to be transporting 'Chir logs' in Truck Nos. JKQ-8065, JK02-9381 & JKD-2454 against permission to carry 'Chir Fire Wood', the petitioner along with others was proceeded against for commission of offences punishable under Sections 6/15/16 of the Jammu and Kashmir Forest Act, 1987 (1930 A.D) and Section 379 RPC.

Learned Judicial Magistrate, Ist Class (Forest Cases), Jammu, however, discharged them of the offences on 23.11.2002.

Finding the discharge bad in law, learned Chief Judicial Magistrate, Jammu, recommended its setting aside making Reference to this Court which came to be Registered as Criminal Reference No. 35/2004.

Allowing the Reference, the Discharge was set aside, leaving the petitioner, however, free to question his discharge which was not otherwise found barred by limitation.

Petitioner has approached this Court again invoking jurisdiction under Section 561-A of the Code of Criminal Procedure for quashing of the Charge.

I have heard learned counsel for the parties and gone through the records.

The case set up by the police against the petitioner is that found to be carrying timber in logs in Truck Nos. JK02-9381, JKD-2454 and JKQ-8065 against permission to carry only firewood in terms of Form No. 25 issued in this behalf by the Forest Officials, the petitioner along with others had committed offences as mentioned at the threshold.

On the basis of the material collected during investigation of the case, the learned Judicial Magistrate was of the *prima facie* view that there was material for proceeding against the petitioner and others and no case for Discharge had been made out, in that, all that was required to be seen at the time of the framing of Charge against the accused was the material collected during the investigation of the case and no other material.

Referring to *Narinder Singh versus State of Jammu and Kashmir, reported as 2000 SLJ, 544*, petitioner's learned counsel submitted that before producing Challan against the petitioner and others, the Police had not taken technical clearance of the Authorized Officer as contemplated under Section 36-D of the Forest Act and the defect being fatal, the Criminal Proceedings against the petitioner were liable to be quashed being unwarranted.

To deal with the petitioner's submission, regard needs to be had to the provisions of Sections 26, 36-D and Chapter VI of the Forest Act. Sections 26 and 36-D are reproduced hereunder for facility of reference:-

“26. Seizure of property liable to confiscation-

- (1) When there is a reason to believe that a forest offence has been committed in respect of any forest produce, such produce together with all tools, arms, boats, carts, equipment, ropes, chains, machinery, vehicles, cattle or any other article use in committing any such offence may be seized by a Forest Officer or Police Officer.
- (2) Any officer seizing any property under this section shall place on such property a mark indicating that

the same has been so seized and shall, as soon as may be, make a report of such seizure before an officer not below the rank of the Divisional Forest Officer (hereinafter referred to as 'authorized officer'):

Provided that when the forest produce with respect to which such offence is believed to have been committed is the property of the Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

- (3) Subject to sub-section (5), where the authorized officer upon receipt of report about seizure, is satisfied that a forest offence has been committed in respect thereof, he may, by order in writing and for reasons to be recorded, confiscate forest produce so seized together with all tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles or any other articles used in committing such offence. Copy of the order of confiscation shall be forwarded without any undue delay to the person from whom the property is seized and to the Conservator of Forest Circle in which the timber or forest produce, as the case may be, has been seized.
- (4) No order confiscating any property shall be made under sub-section (3) unless the Authorized Officer:-
 - (a) sends an intimation in writing about the proceedings for confiscation of the property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made but no order to be passed;
 - (b) issue a notice in writing to the person from whom the property is seized and to any other person who may appear to the authorized officer to have some interest in such property;
 - (c) gives to the officer effecting the seizure and the person or persons to whom notice issued under clause (b) a hearing on date to be fixed for such purpose.
- (5) No order of confiscation under sub-section (3) of any tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles or any other article (other than timber or forest produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorized officer that any such tools, arms, boats, carts, equipment, ropes, chains, machines, vehicles, cattle or any other articles were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against the use of objects aforesaid or commission of forest offence.
- (6) Where the cattle are involved in the commission of a forest offence, the same after seizure by any officer, as the case may be, shall be entrusted to any responsible person under a proper receipt on an undertaking to produce the same when required in case there is no cattle pound within a radius of five kilometers from the place of such offence"

Provided that notwithstanding anything contained in section 30, in case of unclaimed cattle a Forest Officer not below the rank of Range Officer, after giving sufficient publicity in the vicinity of the place of offence for the

owner to come forward to claim the cattle within seven days from the date when such publicity has been given, may dispose them of by public auction. The provisions of the Cattle Trespass Act, Samvat 1977, shall apply in respect of the charges to be levied for the upkeep and fee of the cattle:

“36-D. Police Officers bound to seek technical clearance from Authorized Officer

Any Police Officer seizing any property under the provisions of this Act or rules framed thereunder shall be bound to seek technical clearance of the Authorized Officer to lodge a complaint to the Magistrate under Section 26 of the Act.”

A plain reading of Section 36-D of the Forest Act demonstrates that a Police Officer seizing any property under the provisions of the Forest Act, is required to have technical clearance of the Authorized Officer, only if a Complaint had to be lodged by such officer under Section 26 of the Act for confiscation of the seized property.

The provisions of Section 36-D of the Forest Act when read in the light of the provisions pertaining to Penalties and Procedure appearing in Chapter VI of the Forest Act, indicate that technical clearance in terms of Section 36-D of the Forest Act would be relevant only for purposes relating to confiscation of the seized property and may not otherwise affect the factum of seizure of the forest property, in a trial based on such seizure made by the Police Officer, in a case indicating commission of cognizable offences.

Absence of technical clearance by the Forest Officer, pursuant to the seizure of timber by the Police Officer in the present case, is thus not fatal to the prosecution justifying exercise of jurisdiction under Section 561-A of the Code of Criminal Procedure.

The judgment referred to by the petitioner’s learned counsel does not deal with the true import and reach of Section 36-D of the Forest Act as regards its applicability only to Confiscation proceedings and not otherwise, may not thus be applicable to the facts of the present case.

The order passed by learned Magistrate finding a *prima facie* case for trial of the petitioner and others, on the basis of the material

available on records indicating the accused to have been involved in the illegal transportation of 'Chir logs', against the permission to carry only 'Chir Fire Wood', does not, therefore, warrant interference.

There is no merit in the Petition, which is, accordingly, dismissed.

The trial Court is directed to proceed expeditiously with the trial of the Case to conclude it preferably within a period of one year.

(J. P. Singh)
Judge

Jammu
18.05.2010
Pawan Chopra