

CRIMINAL MISCELLANEOUS No.21788 OF 2003

In the matter of an application under Section
482 of the Code of Criminal Procedure, 1973.

MD. MUSTAFA @ MUSTAFA SON OF LATE MD. WALIULLAH, RESIDENT
OF VILLAGE KUSMAHWA, POLICE STATION DHAKA, DISTRICT
EAST CHAMPARAN.

...

... PETITIONER.

Versus

1. STATE OF BIHAR

2. RANGER, RAXAUL, DISTRICT EAST CHAMPARAN.

...

... OPPOSITE PARTIES.

For the Petitioner : M/S Raghieb Ahsan, Sr. Adv.
W.A. Khan, Adv.

For the State : Mr. A.M.P. Mehta, A.P.P.

P R E S E N T

THE HON'BLE MR. JUSTICE RAKESH KUMAR

Rakesh kumar, J. The petitioner, while invoking
inherent jurisdiction of this Court under
Section 482 of the Code of Criminal
Procedure, has prayed for quashing of an
order dated 17.5.2003 passed by the Sub
Divisional judicial Magistrate, Motihari in
O.C. No.29 of 2003, whereby the learned
Magistrate has taken cognizance of offence
under Sections 41, 42, 52 and 5, 8, 13 and
14 of the Indian Forest Act and summoned
the petitioner to face trial.

2. Short fact of the case is that
opposite party no.2 filed a complaint in
the court of Chief Judicial Magistrate, on
printed performa, stating therein that on
7.5.2003, he seized one bond saw (sealed),

one trolley and 11 Shisam logs, from the petitioner's Saw Mill. Enclosing the seizure list, report was filed in the court of Chief Judicial Magistrate. Since it was an official complaint, the learned Sub Divisional Judicial Magistrate, by the impugned order, took cognizance of the offences and summoned the petitioner.

3. After the order of cognizance, the petitioner approached this Court by filing the present petition, which was admitted on 24.11.2005. In this case, interim protection was granted to the petitioner by this Court on 7.4.2004 and while admitting, it was directed that during the pendency of the application, the interim order passed on 7.4.2004 shall remain operative.

4. Mr. Raghib Ahasan, learned Senior Counsel appearing on behalf of the petitioner, has raised several grounds for quashing of order of cognizance. It was firstly submitted by learned counsel for the petitioner that petitioner had purchased a machine of saw mill, which was set up by Shri Shyam Sunder Prasad and Shri Hari Prasad by taking loan from the

National Small Scale Industries Corporation Ltd., but they could not repay the loan amount. However, the petitioner, under a deed of settlement, purchased the said Saw Mill. After purchasing the Saw Mill, the petitioner applied for license on 20.12.1995 to the Licensing Authority along with two Bank Drafts of Rs.2,000/- as security and Rs.1,000/- on account of license fee besides Rs.150/- as fee payable to Small Scale Industries. It was submitted that despite the fact that petitioner had filed proper application along with adequate fee for grant of license, the license was never granted by the Licensing Authority for operating the saw mill. It was submitted by Mr. Raghib Ahsan, learned Senior Counsel that since the petitioner had already applied for grant of license after depositing requisite fee unless it was refused, it would be deemed that license was granted to the petitioner and as such according to learned counsel for the petitioner, the petitioner was having requisite license in view of deemed approval. Main ground for attacking the order of cognizance, which was raised by



Mr. Raghib Ahsan is that the complaint was filed by an incompetent person and as such said complaint cannot be termed as an official complaint and the learned Magistrate on such complaint was not required to proceed with the case treating the same as an official complaint. It was submitted that on this ground alone, the order of cognizance is violative of Section 17 of the Saw Mills (Regulation Act, 1990). It was argued that competent person for lodging prosecution/complaint was the Licensing Authority whereas in the present case, complaint was filed by Ranger. It was also submitted that the complaint by the Ranger was not permissible even on the basis of delegation of power by the Licensing Authority. It was argued that a delegatee cannot further delegate his power to other one.

5. In support of his contention, learned counsel for the petitioner has produced a copy of judgment reported in 1986 (0) AIJ SC 95 (A.K. Roy vs. State of Punjab and Haryana). Learned counsel has specifically referred to paragraph 10 of the judgment. For better appreciation, it

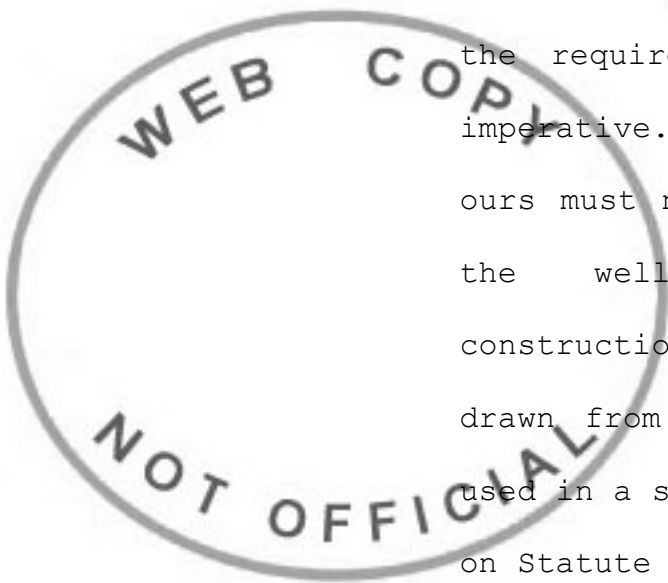
is apt to quote paragraph-10, which is as follows :

"10. A careful analysis of the language of sec. 20(1) of the Act clearly shows that it inhibits institution of prosecutions for an offence under the Act except on fulfillment of one or the other of the two conditions. Either the prosecutions must be instituted by the Central Government or the State Government or a person authorised in that behalf by the Central Government or the State Government, or the prosecutions should be instituted with the written consent of any of the four specified categories of authorities or persons. If either of these two conditions is satisfied, there would be sufficient authority for the institution of such a prosecution for an offence under the Act. The provision contained in sec. 20(1) of the Act does not contemplate the institution of a prosecution



by any person other than those designated. The terms of sec. 20(1) do not envisage, further delegation of powers by the person authorised, except that such prosecution may be instituted with the written consent of the Central Government or the State Government or the person authorised. The use of the negative words in sec. 20(1) "No prosecution for an offence under this Act....shall be instituted except by or with the written consent of" plainly make the requirements of the section imperative. That conclusion of ours must necessarily follow from the well known rule of construction of inference to be drawn from the negative language used in a statute stated by Craies on Statute Law, 6th edn., p.263 in his own terse language :

"If the requirements of a statute which prescribe the manner in which something is to be done are expressed in negative language,



that is to say, if the statute enacts that it shall be done in such a manner and in no other manner, it has been laid down that those requirements are in all cases absolute, and that neglect to attend to them will invalidate the whole proceedings."

Where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. The intention of the Legislature in enacting sec. 20(1) was to confer a power on the authorities specified therein which power had to be exercised in the manner provided and not otherwise."

6. Learned counsel, in support of his stand, has also relied on 1997 BBCJ 553 (Heeralal Bahodi Vs. State of Bihar) and 1998(3) PLJR 429 (Vijay Krishna Sahay Vs. State of Bihar). In some and substance, it was argued that the complaint, which was filed, was un-authorized complaint and as

such on such complaint, the learned Magistrate was not authorized to take cognizance and the impugned order of cognizance is liable to be set aside.

7. Shri A.M.P. Mehta, learned Additional Public Prosecutor, has vehemently opposed the prayer of the petitioner. He has referred to averment made in the counter affidavit dated 3.1.2005. It was argued that the petitioner was running his Saw Mill without obtaining a valid license from the Licensing Officer i.e. Divisional Forest Officer. He admits that petitioner had applied for license of Saw Mill on 20.12.1995, which was not granted. However, the petitioner thereafter, never took any step either for issuance of fresh license or for renewal after deposit of requisite renewal fee under Rule-6 of the Bihar Saw Rules 1993. Learned Additional P.P. has further submitted by referring to averment made in the counter affidavit that in accordance with order of Hon'ble Supreme Court on recommendation of empower committee, Government of Bihar had issued instruction for preparation of a list (seniority list).

A seniority list of 83 Saw Mills was prepared whose license was found renewed till the year 2001. Since the petitioner's Saw Mill was not found renewed, the name of the petitioner's Saw Mill was not mentioned in the said list and without any authorization, the petitioner continued to run the Saw Mill and on the date of occurrence, the said articles/materials/logs were seized. The petitioner could not produce any document either transit permit issued by the competent authority or receipt etc. to show that the wood in question was legally obtained by him. Non production of such documents was itself violative of Section 10 of the Bihar Saw Mill (Regulation Act,1990). Accordingly, the case was filed for violation of Sections 41, 42 and 52 of the Indian Forest Act,1927 and for violation of Sections 5, 9, 10 and penal Section 14 of the Bihar Saw Mill (Regulation) Act,1990. In paragraph-12 of the counter affidavit, it has been categorically stated " that Divisional Forest Officer-cum-Licensing Authority had authorized the range officer of the Forests, Motihari Range, say Ranger

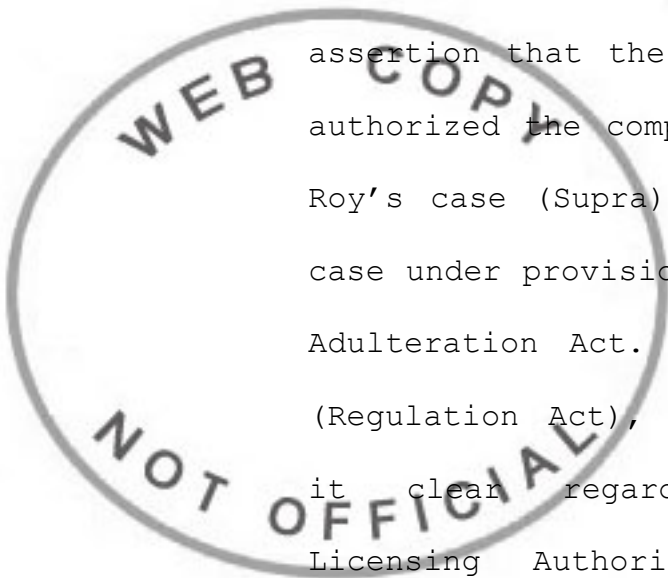
Motihari to make entry Inspection search, seizure against any Saw Mill where the violation of any provision of Bihar Saw Mill Regulation Act, 1990 is reported". On the strength of above averment made in the counter affidavit, Shri A.M.P. Mehta has argued that in the present case, the official complaint was filed by the competent person and as such it is not a case for interference with the order of cognizance.

8. Besides hearing learned counsel for the parties, I have also perused the materials available on record. The main ground, which has been taken by learned counsel for the petitioner is that the order of cognizance is violative of Section 17 of the Bihar Saw Mills (Regulation Act) and as such, it would be appropriate to firstly examine Section 17 of the Act, which is as follows :-

"17. Cognizance of offence.- No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by the licensing

officer or any person duly authorised by the State Government or the licensing officer in this behalf."

9. From the aforesaid, it is evident that cognizance can be taken either on the basis of report in writing constituting offence made by the Licensing Officer or any person authorized by the State or the Licensing Officer in this behalf. It makes it clear that Licensing Authority under Section 17 can also authorize a person to file such report. In the present case, there is specific assertion that the Licensing Authority had authorized the complainant. So far as A.K. Roy's case (Supra) is concerned, it was a case under provisions of Prevention of Food Adulteration Act. In the Bihar Saw Mills (Regulation Act), Section 17 itself makes it clear regarding authorization by Licensing Authority and as such the petitioner may not get any help from A.K. Roy's case (Supra). It also appears from the record that the petitioner without any valid license was running the mill. Same fact has also been reiterated in the



counter affidavit, which has not been controverted by the petitioner by filing any rejoinder.

10. In any view of the matter, the court is of the opinion that it is not a case, which can be categorized as exceptional case warranting exercise of inherent jurisdiction in favour of the petitioner and as such I do not find any material to interfere with the order of cognizance and accordingly, the petition stands rejected.

11. In view of rejection of the present petition, interim order of stay stands automatically vacated.

(**Rakesh Kumar, J.**)

PATNA HIGH COURT
Dated 31st January, 2011
N.A.F.R./N.H.

