

Damodar Sharma Vs. State of Bihar

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Court : Patna

Decided On : Aug-09-2000

Judge : D.N. Prasad, J.

Appeal No. : Criminal Revision No. 109 of 1999 (R)

Appellant : Damodar Sharma

Respondent : State of Bihar

Disposition : Petition Allowed

Judgement :

D.N. Prasad, J.

1. This Criminal Revision is directed against the judgment dated 15.3.1999 passed in Cr. Appeal No. 5/97 by which the learned Session Judge, Gumla modified the sentence of the petitioner to pay a sum of Rs. 1,000/- in place of three months simple imprisonment.

2. The short case of the prosecution is that one Gopal Prasad Gupta, the then Range Officer of Simdega raided the shop namely Grand Furnitures and residential house of the petitioner on 6.11.1992 at about 4.00 p.m. and seized semi-constructed/unfinished furnitures from the shop-cum-residence of the petitioner. Accordingly, the seizure list was prepared and the prosecution report

was filed to the Court of A.C.J.M. Simdega, who took cognizance for the offence under Sections 33 and 42 of the Indian Forest Act.

3. In the Court below, the prosecution examined five witnesses. Defence also examined three witnesses and after hearing both the sides, the Court below i.e. Sub-divisional Judicial Magistrate, Simdega convicted the petitioner for the offence under Section 42 of the Indian Forest Act and sentenced the petitioner to undergo simple imprisonment for three months. Against which the petitioner preferred an appeal before the Sessions Judge, Gumla and the Sessions Judge modified the sentence by imposing a fine of Rs. 1,000/- in place of three months simple imprisonment.

4. The learned Counsel appearing on behalf of the petitioner submitted that the learned Court below committed error in convicting the petitioner without any valid grounds, when there was no independent witness to support the prosecution case and all the witnesses examined on behalf of the prosecution were the officials of the Forest Department. It is further argued that the said articles said to have been recovered or seized was not found in the Saw Mill and as such, the question of violation of Section 41(h) of the Indian Forest Act does not arise as all the articles which were recovered or seized were unfinished and finished furniture which were kept in the shop of the petitioner and the said shop where there is no machine or instrument working could not be said to be a Saw pit, rather the said articles said to have been recovered from the shop of the petitioner and Section 41(h) is not attracted in the instant case.

It is also submitted that there is no evidence to show that the petitioner had ever brought the said article (wood) from the forest area and as such the impugned judgment is fit to be set aside.

5. On the other hand, the learned A.P.P. contended before me that there is no illegality in the impugned judgment and the wood was admittedly recovered and seized from the shop of the petitioner.

6. Before analysing the oral evidence on the point, it is appropriate to deal with Section 41(h) of the Indian Forest Act, which is as follows:

Prohibit absolutely or subject to conditions within specified local limits, the establishment of Saw-pits, the converting, cutting burning, concealing or making of timber, the altering or effacing of any marks on the same, or the possession of carrying of marking hammers or other implements used for making timber.

7. Saw-pits has been defined in the Bihar Saw Mills (Regulation) Act, 1998, as Saw-pit means 'a place where wood is sawn by manually-operated saw.'

8. Obviously, the said furniture said to have been recovered and seized from the shop and the residential house of the petitioner. There is no evidence whatsoever to show that there was any instrument fitted in the said shop for sawing woods. Thus, the shop and the residential house for which there is no evidence to connect the establishment about the Saw-pits, would not amount to attract Section 41(h). Moreover, in the instant case, none of the independent witnesses has been examined from the side of the prosecution to corroborate the case of the prosecution in the manner as alleged. There is also no evidence to show that the petitioner had ever indulged in cutting the woods from the forest area.

9. There appears much contradiction in the evidence as well in respect of prosecution case. Thus, I find merit in this revision petition, which accordingly allowed. The judgment dated 15.3.1999 is, hereby, set aside. The petitioner is acquitted accordingly.