

Ramlal Vs. State of Madhya Pradesh

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Court : Madhya Pradesh

Decided On : May-01-2003

Reported in : 2003(4)MPHT354

Judge : A.K. Shrivastava, J.

Acts : [Forest Act, 1927](#) - Sections 30 and 33(1); Madhya Pradesh Upaj (Vyapar Viniyaman) Adhiniyam, 1969 - Sections 1(3), 5, 15(1), 15(2), 16, and 18

Appeal No. : Criminal Revision No. 331/95

Appellant : Ramlal

Respondent : State of Madhya Pradesh

Advocate for Def. : Chanchal Sharma, Panel Lawyer

Advocate for Pet/Ap. : S.K. Dwivedi, Adv.

Disposition : Revision allowed

Judgement :

ORDER

A.K. Srivastava, J.

1. The accused/applicant has assailed the order passed by the learned Sessions Judge, Panna in Criminal Appeal No. 85/1994 confirming the judgment passed by

the Chief Judicial Magistrate, Panna in Criminal Case No. 1098/92 whereby the applicant has been convicted for the offence punishable under Section 33(1)(b) of the Indian [Forest Act, 1927](#) (in short 'the Act') and under Section 16 of the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 (in short 'the Adhiniyam') sentencing him to suffer two months' R.I. and fine of Rs. 500/- under Section 33(1)(b) of the Act and six months' R.I. and fine of Rs. 1000/- under Section 16 of the Adhiniyam.

2. The facts shorn of unnecessary detail lie in a narrow compass. The case of the prosecution is that on 20-11-1992, Range Officer, Panna along with his staff went to Itwakala, he was having a search warrant on the basis of which he made search of the house of the applicant. During the search he found 117 wooden logs of teak wood which were seized along with other tools and they are referred in the seizure memo (Ex. P-4). These articles were seized by Forest Guard Suresh Mani Shukla (P.W. 5). The case of the prosecution is that, as the applicant did not possess the licence for purchasing the wood, he has committed the offence punishable under Section 33(1)(b) of the Act and violated the provisions of Section 16 of the Adhiniyam. The Trial Court took the cognizance of the offence on a report lodged by Assistant Ranger Chinta Mani Sharma (P.W. 4).

3. The applicant was charged under Section 33(1)(a) of the Act and under Section 5/16 of the Adhiniyam. Needless to say the applicant abjured his guilt.

4. The prosecution thereafter examined its witnesses so as to prove the charges.

5. The learned Trial Judge on the basis of the evidence placed on record came to the conclusion that the applicant did commit the offence for which he was charged and eventually convicted him for the said offences and passed the sentences mentioned hereinabove.

6. In the appeal, preferred by the applicant, the learned Sessions Judge maintained the conviction and the sentence by the impugned judgment. Hence this revision.

7. In support of his revision petition, Shri S.K. Dwivedi, learned Counsel for the applicant has submitted that the seizure of the teak wood logs was made by the Forest Guard Suresh Mani Shukla who was not having any authority to seize them as per Section 15 of the Adhiniyam. His further contention is that the Trial Court erred in law in taking the cognizance of offence and therefore, the entire trial is vitiated. It has also been put forth by Shri Dwivedi, learned Counsel for the applicant that the prosecution did not file any notification under Section 1 (3) of the Adhiniyam and, therefore, provisions of Section 5 are not attracted and as such the conviction is bad in law. It has also been contended by the learned Counsel that as no notification under Section 30 of the Act has been brought on record, the applicant can not be convicted under Section 33(1) of the Act.

8. Per contra Mrs. Chanchal Sharma, learned Panel Lawyer has argued in support of the impugned order and has submitted that no interference is required in this revision petition.

9. To understand the rival contentions of learned Counsel for the parties, it shall be apposite to refer certain provisions of the Adhiniyam. Section 15(1) and 15(2) reads as under :--

'15. Search and seizure of property liable to confiscation and procedure therefor.--

(1) Any Forest Officer as may be notified by the State Government or any Police Officer not below the rank of an Assistant Sub-Inspector or any other person authorised by the State Government may, with a view to securing compliance with the provisions of this Act or the rules made thereunder or to satisfying himself that the said provisions have been complied with-

(i) stop and search any person, boat, vehicle or receptacle used or intended to be used for the transport of specified forest produce;

(ii) enter and search any place.

(2) When there is reason to believe that any offence under this Act has been committed in respect of any specified forest produce, (any forest officer as may be notified by the State Government or any Police Officer not below the rank of any

Assistant Sub-Inspector) or any person authorised by the State Government in this behalf may, seize such specified forest produce along with all tools, boats, vehicles, ropes, chains or any other articles used in committing such offence under the provisions of this Act.'

10. According to the above said provision, the State Government has authorised all Forest Officers for the purpose of Sub-section (1) and Sub-section (2) of the Adhiniyam vide notification dated 26-12-1990 published in M.P. Rajpatra (Asadharan), dated 28-12-1990.

11. On bare perusal of Sub-sections (1) and (2) of Section 15 as well as the notification, it has become luminously clear that the 'Forest Officer', for the purpose of Sub-sections (1) and (2) of Section 15 of the Adhiniyam is an authorised Officer to search and seize the property. In the present case, on the bare perusal of the seizure memo (Ex. P-4), it is found that the seizure of the teak wood (Sagon) was made by Suresh Mani Shukla, Forest Guard (Beet Guard) and, therefore, the seizure was not in accordance to the law. Admittedly, Suresh Mani Shukla (P.W. 5) is not an authorised officer for the purpose of seizure, therefore, he was not empowered to seize the wooden logs and thus the seizure of the alleged teak wood is without any authority.

12. The another important facet of the case is that the prosecution was not launched by the authority authorised under the law. To appreciate the said contention of the learned Counsel for the applicant, it will be relevant to re-write Section 18 of the Adhiniyam which reads as under :--

'18. Cognizance of offences.-- 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 any Forest Officer not below the rank of a Divisional Forest Officer or any other officer as may be authorised by the State Government in this behalf.'

13. On bare perusal of the above provision, it would reveal that the Court can take cognizance of any offence punishable under the Adhiniyam only on a report in writing of the facts constituting such offence is made by any Forest Officer not

below the rank of Divisional Forest Officer or any other officer as authorised by the State Government in that behalf. In the present case, after perusing the record of the Trial Court, it is found that the report was lodged by Chinta Mani Sharma, Assistant Ranger who was not authorised to lodge the report for taking the cognizance by the Court of the offences punishable under the Adhiniyam. Thus, in this view of the matter, the Trial Court erred in taking the cognizance of the offence, because the report was not made by the Divisional Forest Officer or the officer higher in rank to him. There is nothing on record so as to indicate that the State Government authorized the Assistant Ranger to lodge the report.

14. The Courts below had also convicted the applicant under Section 33(1)(b) of the Act. However, the conviction can not be sustained in the eyes of law for the reason that no notification under Section 30 of the Act has been placed on record. Shri Dwivedi, learned Counsel for the applicant has placed reliance on Janu Khan and Ors. v. The State, AIR 1960 Patna 213, in which it has been held that the State Government must issue notifications under Section 30 before any one could be said to be guilty under Section 33(1) (a) and (b) of the Act. Para 3 of the said case Janu Khan (supra) is relevant and which reads as under:--

'3. The first point which Mr. Ghosal has taken on behalf of the petitioners is that their conviction under Section 33 of the Indian Forest Act is bad. The petitioners were charged for having contravened the provisions of Clauses (a) and (b) of Sub-section (1) of Section 33, which read :--

'33. (1) Any person who commits any of the following offences, namely:--

(a) fells, girdles, lops, taps or burns any tree reserved under Section 30, or strips off the bark or leaves from, or otherwise damages, any such tree;

(b) contrary to any prohibition under Section 30, quarries any stone, or burns any lime or char-coal, or collects subjects to any manufacturing process, or removes any forest-produce;

shall be punishable with imprisonment, for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.'

The allegation against the petitioners is that they were stripping off the bark of the logs of sal wood which had been cut, and, therefore, their act falls under Clause (a). It is also alleged that they were removing forest produce, namely, sal rolas, and hence their act falls under Clause (b). The point which Mr. Ghosal has argued is that the State Government must issue notifications under Sections 29 and 30 before any one can be said to be guilty under Section 33 (1)(a) or (1) (b). He has pointed out that there is on the record the true copy of a notification, which purports to have been issued by the State Government under Section 29 of the Act; but he has contended that the Court can not take it into consideration because it has not been properly proved. There is substance in this argument. A notification which is issued by the Central Government or the State Government or by a department of the Government is a public document, and a certified copy of it may be produced in order to prove the existence, conditions or contents of that document under Section 65 of the Evidence Act. Section 78(1) of that Act provides for the manner in which such documents can be proved. It is as follows :--

'78. Proof of other official documents.-- The following public documents may be proved as follows :--

(1) Acts, orders, or notifications of the Central Government in any of its departments or of the Crown Representative or of any State Government or any department of any State Government, by the records of the departments, certified by the heads of those departments respectively, or by any document purporting to be printed by order of any such Government or, as the case may be, of the Crown Representative.'

If the copy which is on the record had been certified by the head of the department which issued the notification, it could certainly be received in evidence and taken into consideration. It could also be taken into evidence if the official gazette in which the notification purported to have been printed by order of the Government had been produced for inspection of the Court. No attempt was made to prove the document in either way. The copy is certified only by a Forest Officer to be a true copy. Hence, I agree with Mr. Ghosal that this notification has not been legally proved. It can not, therefore, be taken into consideration.'

15. In the present case also there is no notification on the record and, therefore, the principle laid down in the case of Janu Khan (supra) squarely covers the point. Thus, for the said reason, the conviction under Section 33(1) of the Act too can not be sustained.

16. In the result, the revision succeeds and is hereby allowed. The judgment of conviction passed by the Courts below is hereby set-aside. The applicant is on bail. His bail bonds are discharged. The amount of fine, if deposited, be refunded to the applicant.

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