

**(2001) 02 JH CK 0027****Jharkhand High Court****Case No:** Criminal Miscellaneous No. 5051 of 1999 (R)

Nijamuddin @ Hafiz

APPELLANT

Vs

State of Bihar

RESPONDENT

**Date of Decision:** Feb. 8, 2001**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 468, 468(2), 482
- Essential Commodities Act, 1955 - Section 12A, 12AA, 7
- Penal Code, 1860 (IPC) - Section 414

**Citation:** (2001) 49 BLJR 1261 : (2001) CriLJ 2440**Hon'ble Judges:** D.N. Prasad, J**Bench:** Single Bench**Advocate:** Nilesh Kumar, for the Appellant; K.K. Jhunjhunwala, APP, for the Respondent**Final Decision:** Allowed**Judgement**

Deoki Nandan Prasad, J.

This application has been filed u/s 482 of the Code of Criminal Procedure for quashing the entire criminal proceeding in connection of Kanke PS Case No. 119 of 1987 for the offence u/s 7 of the Essential Commodities Act and 414 of the Indian Penal Code including the order of taking cognizance dated 5.3.1999.

2. The short case of the prosecution as alleged that the Informant raided the house of the petitioner early in the morning and found 102 bags of Pora Coal lying in southern portion of the courtyard. On interrogation the petitioner did not produce any licence and as such it was suspected that the said Pora Coal was stolen one and it has been brought from Patratu side. Accordingly, FIR was registered. The police investigated the case and submitted charge-sheet against the petitioner. The learned Special Judge took cognizance by the order dated 5.3.1999.

3. The learned counsel appearing on behalf of the petitioner, at the very outset, submitted that the occurrence said to have been taken place in the year 1987 whereas cognizance has been taken in the year 1999 by the Special Judge, who has also got no power to take cognizance as admittedly Act 18 of 1981 by which Special provision by way of amendment in the Essential Commodities Act, 1955 was inserted for a period of 15 years has already been expired and no further act or Ordinance came into force. The Special Court being the Special Judge were constituted for the offence triable by the Judge who shall be appointed by the High Court as per Section 12A of the Essential Commodities Act and both Sections 12A and 12AA of the Act were inserted or provided by the said Special Provision (Act 18 of 1981). It is further submitted that there is a provision for punishment of three years u/s 414, IPC and there is also provision for one year punishment u/s 7 of the Essential Commodities Act and as such cognizance has been taken after expiry of relevant period as provided u/s 468(2)(c). It is further, submitted that the Confiscation proceeding was also initiated in respect of said 102 bags of Pora Coal and the said proceeding was finally dropped after releasing the said Pora Coal in favour of eight persons who were the owners of the said Pora Coal. It is also argued that there is no storage limit of the coal and as such no offence u/s 7 of the E.C. Act is made out.

4. On the other hand, the learned APP contended before me fairly that it is true that after 12 years of the case, cognizance was taken by the Special Judge.

5. Apparently, a confiscation proceeding was initiated for 102 bags of Pora Coal which was dropped and the said Pora Coal was released in favour of eight persons who were the owners of the same. It is also clear that the cognizance was taken after 12 years of the occurrence for the offence u/s 414, IPC and 7 of the EC Act.

Section 468 of the Code of Criminal Procedure reads as follows :

"(468). Bar to taking cognizance after lapse of the period of limitation.--(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in Sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be-

(a) six months, if any offence is punishable with fine only ;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this Section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the

most severe punishment."

6. There is no storage limit of coal in respect of either for the retail dealer or for the wholesale dealer in Bihar Trade Articles Licences Unification Order, 1984. In absence of storage limit, no offence u/s 7 of the E.C. Act is made out. The confiscation proceeding has also been dropped after releasing the said Pora Coal to different persons who were owner of the same. Moreover, cognizance has been taken after much lapse of time. Thus, in my view, the order taking cognizance is itself liable to be quashed.

7. Having regard to the above facts and circumstances of the case, I find merit in this application, which is accordingly allowed. The entire criminal proceedings including order taking cognizance against the petitioner is, hereby set aside.

8. Application allowed.