

**(1989) 08 MP CK 0010**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** Criminal Appeal No. 153 of 1986

State of Madhya Pradesh

APPELLANT

Vs

Sureshchandra Balchand Jain

RESPONDENT

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**Date of Decision:** Aug. 25, 1989

**Acts Referred:**

- Madhya Pradesh Land Revenue Code, 1959 - Section 240, 241
- Madhya Pradesh Transit (Forest Produce) Rules, 1961 - Rule 27, 29
- Madhya Pradesh Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 - Section 1(3), 16, 5, 5(2)

**Citation:** (1990) CriLJ 2554

**Hon'ble Judges:** S.D. Jha, J

**Bench:** Single Bench

**Advocate:** D.D. Vyas, for the Appellant; D.M. Kulkarni, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

S.D. Jha, J.

Appellant State of M.P. through this appeal challenges the acquittal of the respondent accused (hereinafter called "Accused") of charges under Rule 29 of M.P. Transit (Forest Produce) Rules, 1961 (hereinafter called the "Rules") and Section 16 M.P. Van Upaj Vyapar Viniyan Adhiniyam, 1969 (hereinafter called the "Adhiniyam") passed by Judicial Magistrate First Class, Khategaon, by his judgment dated 31-10-1985.

2. The prosecution case is that accused was running a saw mill without a licence, necessary under Rule 27 of the Rules punishable under Rule 29 ibid. On 5-12-1981 Lokpal Singh Bundela (P.W. 1), Range Forest Officer, Indore raided the saw mill of the accused. He found teak timber being sawn. The timber did not have marking of the Forest Department nor were they covered by any transit pass. He seized as per seizure memo (Ex. P/1 and p/2) 7 teaklogs and 24 sawn pieces as per description in

the memos. After usual investigation, complaint was put up in the Court and the Judicial Magistrate First Class, Khategaon, against the accused for the offences aforesaid.

3. The accused pleaded not guilty to particulars of charges of offences described in para 1 above. In his examination the accused admitted the seizure of timber but maintained that the timber belonged to cultivators and no licence for the same was necessary. He examined one Gulabchandra (D. W. 1) to prove that seized timber belonged to him and had come from his Bhumiswami lands. The Judicial Magistrate found that the saw mill of the accused was installed before 1-11-1961 and, therefore, no licence in terms of Rule 27 of the rules was necessary. He also found that the prosecution had not satisfactorily proved that the timber was felled from the Forest of the Forest Department. With these findings he acquitted the accused.

4. In appeal shri D. D. Vyas, learned Government Advocate, did not rightly seriously challenge acquittal of the accused under Rule 29 of the Rules. The Judicial Magistrate for acquitting the accused relied on a Division Bench Judgment of this Court in Ramdas Sahu v. State of M.P. 1982 MPWN 135. In this decision it has been held that Rule 27 of the Rules requiring a licence in case of installing a saw mill, has no application to saw mills existing before promulgation of rules. The rules were promulgated on 1-11-61. There is documentary evidence on record suggesting that by resolution No. 302 dated 24-2-1961, Municipal Council, Khategaon had granted permission to accused to instal a saw mill. Therefore, in view of the aforecited decision of this Court breach of Rule 27 punishable under Rule 29 of the Rules is not made out.

5. Taking next charge u/s 16 of the Adhiniyam, Section 16 provides for punishment for contravention of any of the provisions of the Adhiniyam of the rules made thereunder. As the allegation appeared vague, Shri Vyas was questioned as to what precisely is the contravention alleged against the accused-respondent. Shri Vyas submitted that accused had contravened Section 5 of the Adhiniyam. This section after issue of notification under Sub-section (3) of Section 1 with respect to any area prohibits persons other than the State Government and Officers of the State Government authorised in writing in that behalf or an agent in respect of the unit in which the specified forest produce is grown or found from purchasing or transporting such specified forest produce in such area. The Section has three explanations which are not material for the present appeal. Sub-section (2) carves out four exceptions in application of the restriction. For the present appeal exceptions (a) and (d) reproduced below would appear material:--

(a) a grower of forest produce other than Mahua may transport his produce from any place within the unit wherein such produce is grown or is found to any other place in that unit and a grower of Mahua may possess and transport Mahua from any place within that district;

(d) any person paying right of nistar in any forest in respect of any specified forest produce under any law for the time being in force, may transport such produce for his domestic use or consumption in such quantity and subject to such terms and conditions as may be prescribed.

It is also common ground between the parties that u/s 241 of the Madhya Pradesh Land Revenue Code, 1959, the State Government has to prevent the theft of timber from Government forest power by order published in the gazette to declare any area to be notified area for the purpose of the section, and that in respect of village Padiyadeh no such order has been issued i.e. it is not a notified village u/s 241 of the M.P. Land Revenue Code, 1959.

6. The prosecution examined Lokpal Singh Bundela, Range Forest Officer (P.W. 1); B.M. Sharma (P.W. 2); Gendalal (P.W. 3) and Ghisu Khan (P.W. 4). These witnesses proved seizure of seven logs and sawn pieces of teak wood from the saw mill of the accused. This, however, is not disputed by the accused also. Lokpal Singh Bundela (P.W. 1) in his cross-examination (did) not deny whether the seized timber emanated from the agricultural lands falling in non notified area within the meaning of M.P. Land Revenue Code, 1959. Though Bundela and B. M. Sharma (P.W. 2) denied the presence of any villager at the time of seizure, Gendalal (P.W. 3), Panch witness, in cross-examination admitted that a cultivator of village Padiyadeh was present and he was saying that he had brought the timber for getting it sawn and that the same had been got seized by accused Suresh. He also stated that accused Suresh had informed the Forest Department people that the timber belonged to the cultivator.

7. From the evidence of Gulabchandra (D.W. 1) and a copy of Khasara Panch Sala (Ex. D/1), it appears that this witness owns Bhumiswami agricultural lands in village Aamkhedi and these lands have innumerable teak trees as per entry in column No. 9 of the Khasara. In column No. 1 the witness is shown to be resident of village Padiyadeh, it is not clear whether Aamkhedi and Padiyadeh are the same village or the different villages. From a copy of communication dated 25-4-1974, Ex. D/3, from Collector, Dewas to one Moolsingh S/o Madhosingh Thakur, it is seen that according to this communication village Padiyadeh is not a notified village and permission to fell timber is not necessary subject, however, to compliance with Section 240 of M.P. Land Revenue Code.

8. The version of Gulabchandra (D.W. 1) that timber seized from the mill of the accused belonged to him cannot be lightly brushed aside. The witness undoubtedly owns Bhumiswami agricultural lands at village Aamkhedi and these lands have innumerable teak trees. The village at the material time was not notified u/s 241 of M.P. Land Revenue Code, 1959. The witness could, therefore, without any permission fell timber trees for domestic purpose as seen from the communication of the Collector (Ex. D/3) addressed to Moolsingh referred to above. All this probabalizes the defence of the accused that the timber logs and sawn timber seized from him belonged to cultivator who did not require any permission for felling

timber. There is also no evidence or material to show that accused transported the timber to his mill. Therefore, breach of Section 5 of Adhinyam punishable u/s 16 cannot be said to have been made out against him.

9. As to whether the respondent abetted Gulabchandra (D.W. 1) by sawing his timber, Gulabchandra himself has not been prosecuted. Sub-section (2) of Section 5 has certain exceptions already reproduced above. If Gulabchandra were prosecuted, he could have shown whether or not transporting timber by him to respondent's saw mill was a breach of the provision of the Adhinyam and whether the same was punishable u/s 16 of the Adhinyam. In absence of Gulabchandra being an accused before the Court, in the circumstances aforesaid, the respondent cannot also be convicted for abetment.

10. Acquittal of the accused-respondent on the material placed before the Judicial Magistrate appears to be justified. No interference in the same is called for. The appeal, therefore, fails and is hereby dismissed.