
(1988) 11 BOM CK 0041

In the Bombay High Court

Case No : Criminal Writ Petition No. 951 of 1988

Aanandkumar Raghunath Ray

APPELLANT

Vs

The State of Maharashtra and Another

RESPONDENT

Date of Decision : 22-11-1988

Acts Referred:

Forest Act, 1927 — Section 61A, 61C, 61D

Citation : AIR 1989 Bom 293 : (1988) 4 BomCR 143

Hon'ble Judges : Dharmadhikari, J;Chodeswar, J

Bench : Division Bench

Advocate : A.N. Maniyar, for the Appellant; A.S. Bobde, General and K.H. Chopda, Public Prosecutor, for the Respondent

Judgement

Dharamdhikari, J.—In this writ petition an order passed by the second additional Sessions Judge, Thane. D/- 25th of July 1988 remanding back the matter to the Authorised Officer is challenged on the ground that it is without jurisdiction.

2. A tempo bearing registration No. MRL 5998 is owned by the petitioner. It is his case that he purchased this tempo from one Mansing Nanaji Chavan and it is being used as a public carrier. On information received by the Range Forest Officer, flying squad, Shahapur, this tempo come to be seized. The tempo was found containing logs of teak wood being kept hidden under the beaps of rice husk. It is the case of the respondents that the petitioner and one Shivaji Jadhav were found seated in the tempo. Since it was noticed that illegally cut forest wood was carried in the tempo it came to be seized. The Forest Officer thereafter issued a notice to the petitioner calling upon him to show cause as to why the tempo seized Should not be confiscated. In response to this notice the petitioner filed his reply denying the charge. The Divisional Forest Officer after considering the reply and other material on record, came to the conclusion that the tempo was used in commission of the offence under the Forest Act , and therefore, ordered its confiscation. Being aggrieved by this order the petitioner filed on appeal before the Sessions Judge. The Sessions Judge came to the conclusion

that no order could have been passed by the Authorised Officer unless an opportunity was given to the petitioner to put forward his case and in view of this be allowed the appeal filed by the petitioner and remanded the matter back to the Authorised Officer with a direction to consider the objections of the petitioner and to give him an opportunity to prove the facts required to be proved under s. 61-B(2) of the Forest Act As already observed it is this order of remade which is challenged in the present writ petition.

3. shri Maniyar, learned counsel appearing for the petitioner contended before us that under s.61-A of the Indian Forest Act , in its application to the State of Maharashtra, while deciding the appeal, the Sessions Judge had no power to remand the case. He can only confirm, modify or annul the order appealed against. Hence the order passed by the Sessions Judge is without jurisdiction. He also contended that even on merits remand was not necessary as no material was produced by the department before the Authorised Officer. He there contended that the property involved i.e. tempo is only worth Rs. 7000/-, therefore, it was a petty matter and hence no action was called for. It is not possible for us to accept any of these contentions.

4. Section 61-A which provides for an appeal against the order passed under Ss. 61A and/or 61C reads as under:

"61D. (1) any person aggrieved by any order passed under S.61A or S.61C may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property and the tools. Boats, vehicles and cattle to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity to the appellant and the authorised officer or the officer specially empowered under S. 61C, as the case may be, to be heard pass such order as he may think fit confirming, modifying or annulling the order appealed against.

(2) An order of the Sessions Judge under sub-sec. (1) shall be final and shall not be questioned in any Court."

It is contended by Shri Maniyar that whenever the Legislature wanted that a power of remand should be conferred upon an appellate authority, it has specifically provided for it. In this context he has drawn out attention to S. 386 of the Cr. P.C. and S. 107 of the C.P.C. According to the learned counsel in the absence of such a power an appellate authority, under S. 61D of the Act , has no jurisdiction to remand back the matter.

5. On the other hand it is contended by the learned Advocate General, Shri Bobde, that an appellate authority has implied and inherent power to remand the matter after annulling the order appealed against. In our view this is the correct legal position.

6. It is pertinent to note that a power to hear an appeal is conferred upon a pre-existing judicial authority i.e. the Sessions Judge. As held by the Supreme Court

in *Thakur Das (Dead) by Lrs. Vs. State of Madhya Pradesh and Another*, from amongst other pre-existing judicial authorities exercising judicial powers and judicial functions one of them i.e. the Sessions Judge is chosen by the Legislature to discharge the appellate functions. It is no doubt true that the order passed by the Sessions Judge is made final under sub-sec. (2) of S. 61D but that will not make any difference. From bare reading of S.61d of the said Act, it is quite clear that the Sessions Judge is authorised to pass such orders as he may deem fit. Confirming, modifying or annulling the order appealed against. The power to remand the matter is implicit in this appellate power being incidental.

7. As held by the Supreme Court in *Income Tax Officer v. Mohamed* AIR 1969 SC 430 an express "grant of statutory power" carries with it by necessary implications, the authority to use all reasonable means to make such a grant effective. The power which have been conferred upon the Sessions Judge under S.61D are wide enough to carry with them, by necessary implication all powers and duties incidental and necessary to make exercise of the said power fully effective. In *Income Tax Officer's* case a reference is made to a Full Bench decision of the Kerala High Court in *N.K. Dharmadas Vs. State Transport Appellate Tribunal of Kerala and Others*, . In *N.K. Dharmadas's* case in terms it is held by the Full Bench of the Kerala High Court that the power to remand was incidental to and implicit in the appellate jurisdiction. This is what the Full Bench observed in paras 16, 17, 18 and 19 of the said judgment:

"16. An appeal is a complaint to a superior body of an injustice done or error committed by an inferior one with a view to its correction or reversal. It is a creature of statute, not a constitutional or inherent right. But, as pointed out by Maxwell, where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution (11th Edition page 350).

17. A remand by an appellate court is usually made when the record before it is in such shape that the appellate court cannot in justice determine what final judgment should be rendered and the power to do so cannot but be an essential requisite of the very jurisdiction to entertain the appeal. It is an old maxim of the law that to whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised *Cui jurisdiction data est, ea quoque concernra esse vindentur*, since *quibus jurisdictio explicari non potest*.

18. Kent says that the grant of a jurisdiction implies the grant of all the powers necessary to its exercise (I Kent, Comm. 339). And Sutherland that where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislations effective are included by implication (3rd Edn. Vol. 3 page 19).

19. It is unnecessary to pursue the discussion any further. He entertain no doubt that a power to remand is available to a tribunal functioning under S. 64 of the

Motor Vehicles Act , 1939, that the said power is incidental to and implicit in the appellate jurisdiction created by that Section. And that the learned Judge's decision to the contrary cannot be sustained. We decide accordingly.

We respectfully agree with this view of the Kerala High Court.

8. If S. 61D is analysed on the touchstone of this well established principle, it is quite obvious that an existing judicial authority i.e. the Sessions Judge is empowered to hear an appeal from orders passed under S.61A or S. 61C of the Indian Forest Act . It contemplates that an order would be passed by the appellate authority after giving an opportunity of being heard to the appellant and the authorised officer. Appellate authority is authorised to pass such order as he deems fit, confirming, modifying and annulling the order appealed against. Powers are conferred in widest terms. Therefore, if after annulment of the order the appellate authority feels that justice cannot be done on the basis of the record and further enquiry is necessary, then it can pass a consequential order of remand. The jurisdiction to pass an order of remand is ancillary and incidental to the power of annulment of the order appealed against. Therefore, the appellate authority has implied power to justice between the parties. Any other interpretation will result in anomalies and to some extent will defeat the very purpose of the provisions. Therefore, it is not possible for us to accept the contention of shri Maniyar in this behalf.

9. So far as the contention on merits of the matter is concerned i.e. no remand was necessary in the present case, we find no substance in this contention also. The Sessions Judge came to the conclusion that the order passed by the authorised officer is bad in law. Since he has failed to give an opportunity to the petitioner to put forward his case. As to what is the scope of this provision has been considered by the Division Bench of this court in Shaikh v. A. D. Chaudhari 1987 Mh LJ 1035. After the show cause notice is issued. The person concerned is entitled to a and to put forward his case. This is a case where such an opportunity was denied to the petitioner-appellant. When it is held that the order is vitiated since the procedure prescribed by s. 61A was not followed, then obviously remand was a must so as to enable the petitioner to put forward his case before the competent authority. In these circumstances the appellate authority could not have decided the matter on merits and remand was the only alternative.

10. The contention that the was not a fit case for remand as the property involved i.e. the tempo was only worth Rs. 7000/- has also no merit. The price or value of the vehicle involved is not relevant for taking an action under S.61A of the Act . In any case that is a matter which the authorised officer has to consider. Therefore we do not find any substance in this contention also.

11. A contention was also raised by Shri Maniyar that no provision has been made for filing an appeal against an order passed under s. 53 of the Act refusing to release the vehicle or property. The petitioner wants us to make a

recommendations to the State Government to amend the law for providing an appeal to the Sessions Judge, against the order passed under S. 53 of the Act . Since this involves a matter of policy and nobody can claim a vested with in that behalf, we leave it to the State Government to consider the said question.

12. In the result, therefore, rule is discharged. Since the matter is pending long, the authorised officer is directed to hear and decide the matter as expeditiously as possible and preferably within a period of two month from the date of the receipt of the writ of this court.

13. Rule discharged.