

(1991) 08 KAR CK 0005

In the Karnataka High Court

Case No : Criminal R.P. No's. 190 and 191 of 1991 (Against the Common Judgment passed by S.J. Hasan, D/- 1-1-1991)

Abdul Rawoof and others

APPELLANT

Vs

The Deputy Conservator of Forests

RESPONDENT

Date of Decision : 07-08-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Karnataka Forest Act, 1963 — Section 47 D

Citation : (1992) CriLJ 1218 : (1991) ILR (Kar) 3226 : (1992) 1 KarLJ 213

Hon'ble Judges : N.Y. Hanumanthappa, J

Bench : Single Bench

Advocate : Sri. Kashinath Rao Patil, for the Appellant; Sri H. Kantharaj, H.C. Govt. Pleader, for the Respondent

Judgement

1. Since the facts are common and the issue involved in these two petitions are common, they are clubbed together and a common order is passed after hearing the learned counsel on both the sides.

2. Aggrieved by the orders passed u/s 71-A of the Karnataka Forest Act, 1903, (1964) the petitioners preferred appeals to the Sessions Judge, Hassan, in Criminal Misc. Appeals 3/87 and 4/87 contending that (1) the orders of confiscation are illegal and arbitrary, (2) the confiscations are without jurisdiction as the authority is not empowered under the Act to confiscate, (3) when the evidence of transportation of forest produce not established, there should not have been confiscation, (4) even if the transportation of forest produce is proved, at best fine should have been levied instead of confiscating the vehicles and (5) the orders of confiscation are arbitrary and against the principles of natural justice. Both the appeals came to be clubbed by the learned Sessions Judge for the purpose of convenient disposal. After hearing the appellants therein and also the Authorised Officer who passed the orders of confiscation, the learned Sessions Judge posed the following two points for his consideration :-

"1) Whether the impugned order passed by the Authorised Officer is proper and justifiable in law ?

2) What order ?"

As far as point No. (1) is concerned, the learned Sessions Judge, after going through Sections 86 and 87 of the Act and Rule 167 of the Rules framed under the Act came to the conclusion that the contention of the Appellants that the Authorised Officer has no power or jurisdiction to confiscate the vehicles in question is incorrect and untenable. The relevant observation is at para 10 and it is as follows :-

"10. The reading of the provisions by the learned counsel, appears to be not correct. The provisions of the Forest Act, empowered the Authorised Officer to confiscate any vehicle, tool, goods, vessels etc., if they were found to have been used for the "commission of the offence under the Forest Act. It is not the punishment that is imposed but the confiscation provided is for the use of the vehicles etc., for the commission of the forest offence and therefore, I do not find any merit in the contention urged by the appellants" counsel".

Regarding other contention that the confiscations were arbitrary and against the principles of natural justice, at para 12 of the order the learned Sessions Judge discussed the same and held that proper enquiry should have been held by the Authorised Officer and came to the conclusion that the orders passed in the absence of enquiry deserves to be set aside. Accordingly, he allowed the appeals, set aside both the orders impugned therein and remitted the matters to the Authorised Officer for fresh disposal after affording proper opportunity to the appellants therein. The findings regarding absence of enquiry and failure to afford an opportunity to the appellants are as follows :-

"12. Coming to the merits of the case, the Authorised Officer without examining any witness on behalf of the prosecution has merely relied on the F.I.R. and the mahazar produced by the prosecution. No formal enquiry is conducted by him to ascertain the truth of the allegations made by the prosecution. He is sitting as a quasi judicial authority to decide an issue arising out of the Forest Act. Confiscation of property of a citizen is a serious matter, which involves questions of fact and law. The Authorised Officer cannot confiscate the property without holding that the vehicles in question have been used for the commission of the offence under the Forest Act. The absence of the respondent apart, the learned Authorised Officer should have recorded the statement of witnesses and perused the records produced by them, which is not done in this case. There cannot be any short cut method in these matters, except an inquiry, even if it is an ex parte one. I am, therefore, of the opinion that the matter requires an inquiry afresh in both the matters.

13. The appellants have now seriously canvassed that no opportunity is given to them. I, therefore, "hold that an order which is not based on any inquiry, though an inquiry is contemplated under statute is bad in law. I, therefore, answer point

No. 1 in the negative".

Challenging the order passed by the learned Sessions Judge, the petitioners have preferred these revision petitions.

3. Mr. Kashinatha Rao Patil, learned counsel for the petitioners, submitted that (1) the order of remand made by the learned Sessions Judge is one without jurisdiction; (2) nowhere in Section 386, Cr.P.C. it is stated that if the Appellate Court comes to the conclusion that the order challenged therein is incorrect one the same shall be remitted. All that it can do is to dismiss the appeal or reverse or alter the order under appeal. There cannot be any remand. According to him, Section 71-D of the Forest Act is identical to Section 386, Cr.P.C.; (3) when the alleged transportation of sandal wood in the vehicles in question is not proved, the confiscations were illegal; (4) that the Sessions Judge should have taken into consideration whether the Authorised Officer is empowered to confiscate or not; (5) that in similar circumstances where transportation of forest produce was not proved, this Hon"ble Court had held in Criminal Revision Petition No. 366/87, disposed of on 23-8-1988 *Satinderpal Bhandari v. Deputy Conservator of Forests*, that the confiscation of vehicle was illegal, wherein it is held as follows :-

"4. A perusal of the records shows that on 25-2-1985 when the case was taken up for cross-examination of the witnesses already examined, the petitioner made an application with a request to direct production of the forest produce allegedly seized from the lorry in question. But, there is nothing in the order sheet maintained in the proceedings before the Authorised Forest Officer to show that either he called for the forest produce allegedly so seized or they were produced. A reading of the order also does not show that he had otherwise verified the seizure of the sandalwood from the lorry in question with reference to the marks in the panchanama alleged to have been made while seizing the forest produce. "Since as provided under S. 71-A of the Karnataka Forest Act it is obligatory on the Authorised Officer to satisfy about the commission of the offence in relation to forest produce seized under S. 62 of the Act before making any order of confiscation, this non-compliance vitiates the order of confiscation passed by the Authorised officer, unfortunately the learned Sessions Judge had also failed to notice this infirmity present in the order passed by the Authorised Officer. Therefore, following the decision in *Deputy Conservator of Forests v. Chankor Singh*, (Cr.R.P. 95/88 DD 8/8/88), the revision is allowed and the orders of confiscation passed by the Authorised Officer and confirmed by the Sessions Judge are set aside. It is ordered that the vehicle shall be released in favour of the petitioner".

(6) Lastly, the learned counsel contended that u/s 71-D of the Act the Sessions Judge gets jurisdiction only to confirm, modify or annul the order and not to remand. For these reasons, the learned counsel for the petitioners submits that the petitions be allowed.

4. On my directions Sri Kantharaj, learned Government Pleader, took notice for

the respondents. He submitted that no illegality or miscarriage of justice has been made in the order of the learned Sessions Judge but he passed the order exercising the powers conferred u/s 71-D of the Act. Since there is no manifest illegality or miscarriage of justice or abuse of the process of the Court, it is not proper to interfere in the matter. According to him, some of the contentions raised by the learned counsel for the petitioners are purely questions of fact which can be raised before a proper forum and not before this Court while exercising its power under S. 397 read with S. 401, Cr.P.C.

5. After hearing both the sides and perusing the records, I am of the opinion that none of the contentions of Mr. Kashinatha Rao Patil deserve any consideration for the simple reason that the appeals preferred before the learned Sessions Judge are not under provisions of Cr.P.C. but u/s 47(D) of the Karnataka Forest Act of 1963 which clearly confers power on the learned Sessions Judge to hear an appeal against an order of confiscation by giving powers to give an opportunity to both the sides and then pass orders either confirming, modifying or annulling the order challenged. When the Legislature itself has conferred such a power on the learned Sessions Judge, merely because the word "remand" is not shown or mentioned, that itself is not enough to contend that the Appellate Court has no jurisdiction to remand the matter when it comes to the conclusion that the order under challenge is against the principles of natural justice or based on no material. When a Court or an authority has got power to confirm, modify or annul an order, it is implied that it has also the power to remand or direct re-trial. Hence, it is to be stated that the order of remand made by the learned Sessions Judge is well within the powers conferred u/s 47-D of the Act.

6. Apart from this, even the complaint of the petitioners before the learned Sessions Judge was that the order of confiscation was arbitrary and the same was as a result of non-compliance of principles of natural justice. When such a complaint was made and the Court had honestly gone into that aspect of the matter and came to the conclusion that principles of natural justice were not complied with and therefore passed the order of remand in order to give an opportunity to the petitioners to establish their case, in my view, there is no illegality in the order passed by the learned Sessions Judge.

7. As far as the reliance place by Mr. Kashinatha Rao Patil on the order in Criminal Revision Petition No. 366/87 (S. Bhandari's case) is concerned, on facts it has no application to the present cases because in that case what was required to consider was whether the Sessions Judge was right in remanding the matter and not the question of confiscation as it has to be done by the Authorised Officer pursuant to the order of remand.

8. Mr. Kashinatha Rao Patil submits that even after remand fresh enquiry by the Authorised Officer will become an attempt in futility because there cannot be any finding in the affirmative as not a single pellet of sandal wood was found in the vehicles in question according to their own statement. This submission is belied by a perusal of the facts narrated in the order of confiscation passed by the

Authorised Officer wherein it is clearly stated that sandalwood pellets were kept behind the driver of the respective vehicles. Even the number of sandalwood pieces were mentioned as 149. This is correct or not, it is not for this Court to go into that aspect of the matter. If it is for the petitioners to disprove this. If the same is done, definitely the Authorised Officer will pass necessary orders.

9. The plea with regard to the competency or jurisdiction of the Authorised Officer under sections 86 and 87 of the Act to confiscate the vehicles is still available to the petitioners to contend the same before the Authorised Officer. If such a contention is taken, the Authorised Officer has to apply his mind to the relevant provisions of the Act and then passed appropriate orders.

10. In the result, the petitions are dismissed. All other contentions of the parties are left open.

11. Sri H. Kantharaj, learned Government Pleader, is permitted to file his memo of appearance in four weeks.

12. Petition dismissed.