
(2009) 08 JH CK 0098
In the Jharkhand High Court

Alok Kumar Singh

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 13-08-2009

Acts Referred:

Forest Act, 1927 — Section 52, 52(5)

Citation : (2009) 08 JH CK 0098

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—I.A. No. 2083 of 2009 has been filed by the petitioner, praying for allowing him to carry out certain amendments in the original writ application in order to incorporate certain developments which had transpired during the pendency of this writ application and also the corresponding prayers thereto.

2. Mr. Sanjay Piprawall, learned Counsel for the petitioner explains that though the order of confiscation of the petitioner's vehicle alongwith the materials loaded thereon, was passed by the Respondent No. 3 on 13.12.2003, in Confiscation Case No. 19 of 2003"but initially the petitioner had not challenged this order as also the order of the appellate authority dated-22.06.2004, passed in Confiscation (Forest) Appeal No. 1 of 2004 dismissing the aforesaid order of confiscation. Rather, the petitioner in the instant writ application has challenged the order of the Revisional authority dated-27.11.2004, which was passed against the order of the appellate authority. The petitioner being now. advised to challenge the orders, both of confiscation as also the order passed by the appellate authority against the order of confiscation and therefore, the petitioner seeks to amend his original writ application in order to incorporate certain additional prayers challenging the order dated 13.12.2003, passed in the Confiscation proceedings and the order dated 22.06.2004, passed by the appellate authority in Confiscation (Forest) Appeal No. 1 of 2004.

3. Learned Counsel for the Respondents raises no objection.

4. Considering the fact that the nature of reliefs, as claimed by the petitioner in the original writ application, is not likely to be altered by the amendments sought to be made, prayer for amendment is allowed.

I.A. No. 2083 of 2009 shall form part of the original writ application.

5. I.A. stands disposed of.

W.P. (C) No. 1144 of 2005

Heard Sri Sanjay Piprawall, learned Counsel for the petitioner and J.C. to G.P.-IV for the respondent State.

2. The petitioner in this writ application has prayed for quashing the order dated 27.11.2004 (Annexure-5) passed by the Respondent No. 2 whereby the petitioner's Revision Application filed against the order dated 22.06.2004 passed by the Appellate Authority (Annexure-4), was rejected.

A further prayer has been made for quashing the order of confiscation dated 13.12.2003 (Annexure-3) passed by the Respondent No. 3 in Confiscation Case No. 19 of 2003 whereby the petitioner's vehicle was confiscated under the provisions of Indian Forest Act and also to quash the order dated 22.06.2004" passed by the Appellate Authority (Respondent No. 5) in Confiscation (Forest) Appeal No. 1/2004.

3. Facts of the case briefly stated are that the petitioner is the owner of a commercial vehicle namely a Jeep bearing registration No. JH10C-1587 used to be plied by the driver engaged by the petitioner.

On 15.10.2003 at about 5.00 AM, the vehicle was intercepted by the forest officials and on inspection, it was found loaded with some forest produce. The driver and two co-passengers who were present along with the vehicle were promptly detained on their failure to offer a reasonable explanation regarding the circumstance in which the forest produce was being transported in the vehicle.

A criminal proceeding was thereafter initiated on the basis of the prosecution report of the concerned authority against not only the three persons who were arrested at the spot but also against the petitioner on the ground that he happens to be the owner of the seized vehicle.

A confiscation proceeding was thereafter initiated on the basis of the prosecution report in respect of the vehicle. The petitioner was noticed and he had submitted his written statement claiming specifically that the vehicle being a commercial vehicle, it was entrusted to the driver with strict instruction to use for carrying passengers and the driver was never instructed to carry or transport any forest produce and further, that the loading of the forest produce and transportation of the same, was absolutely without his knowledge.

The concerned authority, had however dismissed the petitioner's objection and

by the impugned order, proceeded to confiscate the petitioner's vehicle.

Against the order of confiscation, petitioner preferred appeal but his appeal was dismissed. Against the order of dismissal of appeal, the petitioner preferred a revision application before the Revisional Authority which was also dismissed.

4. Sri Sanjay Piprawall, learned Counsel for the petitioner, while assailing the impugned orders would submit that the order of confiscation is totally against the provision and spirit of Section 52 of the Indian Forest Act. Learned Counsel explains that according to the provisions of Section 52(5) of the Indian Forest Act, no order of confiscation of any vehicle could be made when it is proved by the concerned owner of the vehicle that the use of such vehicle was without his knowledge or connivance and all reasonable and necessary precaution has been taken against the use of the vehicle for commission of forest offence.

Learned Counsel explains that the prosecution report which was submitted before the Confiscating Authority, had categorically indicated that after investigation it was established that the petitioner, though being the owner of the vehicle, was not involved either in loading of the forest produce or in the transportation thereof on the vehicle and such loading on the vehicle was done by the passengers without the knowledge of the petitioner. The report also had confirmed that the vehicle was being used as a commercial vehicle and was entrusted to the driver and it was in his exclusive use and occupation.

5. Referring in this context to the judgment of the Supreme Court in the case of Assistant Forest Conservator v. Sharad Ramchandra Kale 1998(1) PLJR 21 SC, learned Counsel submits that the aforesaid principle of law as laid down in Section 52 of the Act has been elaborately dealt with and explained in the judgment of the Supreme Court. Learned Counsel adds further that in course of confiscation proceeding, the petitioner has adduced enough evidence to affirm that the loading of the forest produce and the transportation thereof on the vehicle was without his knowledge and that he has not given his consent to his driver in respect of unauthorized use of the vehicle.

6. Learned Counsel for the respondent State, on the other hand, would submit that there can be no dispute regarding application of Section 52 of the Act and even according to the provisions of the aforesaid Section, the onus is upon the owner of the vehicle to prove that the use of the vehicle for illegal purposes was without his knowledge. In the present case, as per the findings of the revisional authority, it appears that even though a report by the Investigating Officer was submitted in favour of the petitioner, but such report was not based on any evidence on record. In support of his arguments learned Counsel for the respondents refers to a judgment in the case of Himat Lal Walani v. State of Jharkhand 2004 Cri LJ 140 Jhr

7. I have heard counsel for the parties and I have also gone through the various orders impugned in this writ application.

8. From the impugned order of the Confiscating Authority, it appears that the objections taken by the petitioner have been adequately recorded therein in as much as, the petitioner had relied upon the statement of the prosecuting agency himself in which, the petitioner's culpability in the alleged offence has been negated. It also appears from the report submitted by the Investigating Officer that the observation that no evidence was found regarding the petitioner's involvement in the alleged offence, was based on the statement of witnesses and other materials collected in course of investigation. This being an evidence which has supported the petitioner's stand taken in defence and used by the petitioner himself as a part of his evidence, could not have been dismissed merely on the presumption as recorded by the Confiscation Authority and Revisional Authority in the Revisional Order, that the Investigating Officer appears to have connived with the petitioner in exonerating the petitioner from the penal consequences of the offence.

9. Apparently, the observations of the Confiscating Officer as also of the Revisional Authority are not based upon any reasonable ground. Rather, they appear to be based on conjecture and surmises.

10. The judgment referred to by the learned Counsel for the respondents in the case of Himat Lal Walani (Supra) is distinguishable from the facts of the present case in as much as, in the aforesaid case, the owner of the confiscated vehicle had though attempted to adduce evidence but he had failed to adduce sufficient evidence. In the present case, on the other hand, it appears that more than sufficient evidence has been adduced by the petitioner particularly, the evidence of the Investigating Officer (Annexure-2) and also the statements of witnesses recorded by the Investigating Officer in the context which goes to establish the innocence of the petitioner.

11. Learned Counsel for the respondents submits at this juncture "that since three concurring findings of three separate authorities including the Revisional Authority have been recorded, the same cannot be interfered in exercise of the writ jurisdiction of this Court since it would amount to recording of a fresh finding of facts.

12. This argument of the learned Counsel for the respondents does not appeal as because, the finding recorded by the Confiscating Authority is, on the very face of it, perverse in view of the fact that it had ignored the material evidences adduced on behalf. of the petitioner on which the petitioner has relied for his defence and furthermore, the evidence has come on record, has not been discussed adequately in the light of the provisions of Section 52 of the Indian Forest Act. In view of the perversity of the finding, this Court can certainly exercise its writ jurisdiction to correct an impropriety which is apparent on the face of the record.

13. In the light of the above discussions, I find merit in this application. Accordingly, this writ application is allowed. The impugned order of confiscation

as also the impugned orders passed by the Appellate Authority and the Revisional Authority are hereby set aside.

It is informed that the petitioner's vehicle has already been released on furnishing Bank Guarantee in terms of the orders earlier passed by this Court. No further order therefore needs to be passed in this regard.