
(2019) 08 JH CK 0071

In the Jharkhand High Court

Case No : Writ Petition (c) No. 3885 Of 2012

Anil Kumar Sharma alias Anil Sharma

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 29-08-2019

Acts Referred:

Indian Forest Act, 1927 — Section 33

Citation : (2019) 08 JH CK 0071

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Shailendra Kr. Singh, Krishna Shankar

Final Decision : Allowed

Judgement

1. Heard Mr. Shailendra Kr. Singh, learned counsel for the petitioner and Mr. Krishna Shankar, learned Standing Counsel (L&C)-II, for the respondents

2. In this writ application, the petitioner has prayed for a direction upon the respondents particularly respondent no. 4 to release the vehicle of the petitioner bearing registration no. B.R.O. 1827 along with seized materials of 200 cft. Stone Boulders loaded on the said truck which was seized in connection with Confiscation Case No. 05/2005.

3. A prosecution report was submitted which led to institution of C.F. Case No. 41/2005 u/s 33 of the Indian Forest Act against the driver of the vehicle bearing registration no. B.R.O. 1827. The prosecution report reveals that one Shankar Tiwary, Forest Guard had submitted a report that a truck bearing registration no. B.R.O. 1827 loaded with 200 cft. Stone Boulder was found at Bishrampur-Pandu Main Road. It was stated that the transport challan did not bear the date of transporting and on the basis of suspicion the truck along with stone boulders were seized and seizure list was prepared. After the seizure the truck was brought to Bishrampur Police Station. The petitioner claims that he is the owner of the seized truck as also a partner of M/s. Vicky Construction which was

granted a mining lease. Consequent to the seizure of the vehicle along with the stone boulders confiscation proceeding was initiated by the respondent no. 4 being Confiscation Case No. 5/2005. During the confiscation proceeding the petitioner through his brother and power of attorney holder Dilip Kumar Sharma had filed an application on 21.03.2005 stating therein that Truck No. B.R.O. 1827 was being used for transportation of stone boulders but on account of mistake the date could not be mentioned in the transport challan. In the said application a further prayer was made for conducting an inquiry and thereafter release the truck in favour of the petitioner. The respondent no. 4 vide order dated 05.12.2006 had passed an order for confiscating the vehicle as well as the stone boulders on the ground that the stone boulders which were loaded on the truck were brought from Plot no. 2387 of Kutumu forest area which is a Protected Forest.

4. Aggrieved by the order of confiscation the petitioner had preferred an appeal being Confiscation Appeal No. XV/15/07-08 before the respondent no. 3 which was allowed on 25.08.2011 and the order dated 5. 12.2006 passed by the respondent no. 4 was set aside. While allowing the appeal the respondent no. 3 had come to a conclusion that the allegations levelled against the petitioner was merely on suspicion and that the learned Judicial Magistrate had already acquitted the accused in connection with C.F. Case No. 41/2005. A revision application was preferred before the respondent no. 2 being Confiscation Revision Case No. 103/2011 which was dismissed on 25.04.2012 and the order of the respondent no. 3 was affirmed.

5. In view of the fact that the order of confiscation of the vehicle as well as the stone boulders loaded thereon were set aside by the Appellate Authority and affirmed by the Revisional Authority representation was preferred by the brother and the power of attorney holder of the petitioner namely Dilip Kumar Sharma before the respondent no. 4 for release of the truck and the boulders. It has therefore been stated that in spite of there being no order of confiscation existing the respondents have continued to keep the vehicle and the boulders in their possession and therefore the petitioner has prayed for release of the vehicle as well as the stone boulders.

6. The respondent no. 4 has filed a counter affidavit on 12.10.2012 in which apart from the fact regarding the initiation of the confiscation case and the orders passed thereupon it has been stated that proposal for filing a writ application was given and is pending for approval before the respondent no. 2. It has also been stated in the counter affidavit that representation submitted on behalf of the petitioner is pending because the respondent no. 4 has to file the writ application.

7. This Court on 24.07.2019 had passed the following order:

"The truck was seized in the year 2005 and in spite of the order passed by the Confiscating Authority having been set aside it is surprising to note that the truck

is still lying in the Police Station. This calls for a strict action. However, before passing any order it would be necessary that the respondents file an affidavit stating the actual and correct facts. The respondents are further directed while filing the supplementary affidavit to bring on record the photographs of the present state of the vehicle bearing registration no. B.R.O. 1827."

8. Consequent to the order dated 24.07.2019 a supplementary counter affidavit has been filed by the respondents in which it has been stated about the approvals to be taken by the competent authorities for filing of the writ application.

9. This Court on 01.08.2019 had passed the following order:

"Learned counsel for the petitioner is directed to file a supplementary affidavit annexing copy of the documents showing the purchase of the vehicle. Learned counsel for the petitioner prays for two weeks' time since it has been stated that the documents have been submitted in the Court of C.J.M., Daltonganj and therefore, the petitioner has to make an application for getting the documents released in his favour."

10. Consequent to the said order a supplementary affidavit has been filed by the petitioner in which it has been stated that the truck bearing registration no. B.R.O. 1827 was purchased by the petitioner which is a second hand vehicle at a cost of Rs. 2,50,000/- and further Rs. 2,00,000/- was expended on account of denting, painting, repairing etc. The supplementary affidavit also contains the judgment of acquittal passed in C.F. Case No. 41/2005 of the driver of the vehicle namely Surajdeo Paswan.

11. This is a glaring instance when an ordinary citizen has been victimized by the administrative machinery. The truck which was the means of livelihood of the petitioner has been allowed to rot in the Police Station for no fault of the petitioner. Kept under the open sky and suffering from the vagaries of weather has converted an asset into a scrap which is of a negligible or of no value to its owner.

The facts as stated by the writ petitioner are not disputed. The order of confiscation passed by the respondent no. 4 was set aside by the Appellate Authority on 25.08.2011. The order of the Appellate Authority was challenged by the department in revision which was dismissed on 25.04.2012. In the counter affidavit which was filed on 12.10.2012 the plea which was taken is reflected in para 6 and 10 which reads as follows:

"6. That in reply to paragraph-3 of the writ petition it is stated and submitted that questions are related to validity of order of the Authorized Officer who confiscated the truck and forest produce found loaded and seized after hearing both parties. The petitioner filed appeal before the Deputy Commissioner, Palamu, who set aside the order of the Authorized Officer-Cum-D.F.O. Then the D.F.O. filed revision before the Secretary-Cum-Revisional Authority, Forest and

Environment Department, Jharkhand, Ranchi who also confirmed the order of the Deputy Commissioner, Palamu. Then a proposal for filing writ in the Hon'ble High Court, Ranchi was prepared and sent to the Secretary, Forest and Environment Department, Jharkhand, Ranchi for approval. The same has not yet been filed. The same may be filed even now. No further comment is required for the same and except the submission that the Hon'ble Court which passed orders, failed to appreciate the case in its right perspective.

10. That in reply to paragraph-11 of the writ petition it is stated and submitted that order dated 25.04.2012 of the Revisional Authority-Cum-Additional Chief Secretary, Forest and Environment Department, Jharkhand, Ranchi has to be challenged by the D.F.O. in writ petition which ought to be filed after due approval by the P.C.C.F. and the Secretary, Forest and Environment Department, Jharkhand, Ranchi."

12. It was also stated that in view of the impending writ application the representation was not considered. In terms of the order dated 24.07.2019 a supplementary counter affidavit has been filed which is basically a reiteration of the earlier counter affidavit save and except elaborating the steps taken for filing a writ application. The writ application was never filed otherwise specific mention of the same would have been made. Even after expiry of almost 7 years from the date the counter affidavit was filed there has been no perceptible change in the stance of the respondents. All these while the truck continued to remain stranded in the open in the Police Station. Once the order of the Revisional Authority had attained finality and the confiscation itself was held to be bad by echoing the findings of the Appellate Authority the vehicle of the petitioner should immediately have been released along with the stone boulders. Non release of the vehicle on account of a futuristic course of action which ultimately never saw day light cannot be a valid ground sanctioned by law to continue with the act of the respondents in impounding the vehicle. It is interesting to note that in the criminal case also the driver of the vehicle namely Surajdeo Paswan was acquitted on the ground that the prosecution is based on suspicion and surmises.

13. In the case of "Smt. Basavva Kom Dyamangouda Patil versus State of Mysore and Another" reported in (1977) 4 SCC 358, it was held as follows:

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the

property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.

14. The necessity to retain the vehicle along with the boulders ceased to exist once the Revisional Authority had approved the order of the Appellate Authority. Therefore the retention of the vehicle and the boulder amounts to an act of illegality on the part of the respondent-authorities.

15. The next question which falls for consideration is how the petitioner is to be compensated. In the supplementary affidavit the petitioner has stated that he had purchased the vehicle at a price of Rs. 2,50,000/- and he had expended Rs. 2,00,000/- towards repairs. The certificate of registration reveals that the vehicle was transferred in the name of the petitioner on 18.01.2000. The ownership of the petitioner over Truck no. B.R.O. 1827 has not been disputed by the respondents. The vehicle is lying in the Police Station immediately after its seizure on 12. 03.2005. Some photographs have been filed by the learned State Counsel from which it appears that the vehicle is decaying though it is surprising to note that even after 14 years the tyres do not seem to have flattened ! The value of the vehicle has depreciated considerably as the vehicle has withered being kept in the open. The petitioner has suffered a considerable loss being not able to operate the vehicle in spite of the order of the confiscating authority being set aside by the higher forum. Therefore on a proper consideration of the entire facets of the case the financial loss caused to the petitioner on account of the high handed action on the part of the respondents in impounding and keeping the vehicle in the Police Station without there being any legal empowerment entitles the petitioner to a cost which is conservatively estimated to be Rs. 10,00,000/-.

16. This writ application accordingly stands disposed of with a direction to the respondent no. 4 to release the truck bearing registration no. B.R.O. 1827 along with the stone boulders loaded thereupon immediately on receipt of a copy of this order in favour of the petitioner who shall at the time of release produce the proof of his identity.

17. For all the in actions of the concerned respondents and the deprivation handed out to the petitioner the Department of Forest and Environment, Government of Jharkhand is imposed a cost of Rs. 10,00,000/- to be paid to the petitioner within four weeks from the date of receipt/production of a copy of this

order.

18. This writ application stands allowed with the aforementioned directions.