

(2005) 09 BOM CK 0105

In the Bombay High Court

Case No : Criminal W.P. No. 106 of 2003

Ashok Gidwani and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 02-09-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Forest Act, 1927 — Section 52, 55, 61A, 61B, 61C

Citation : (2006) 1 MhLj 561

Hon'ble Judges : R.C. Chavan, J;J.N. Patel, J

Bench : Division Bench

Advocate : M.P. Khajanchi, for the Appellant; M.P. Badar, Special Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.C. Chavan, J.—Petitioner No. 1 Ashok Jiwanmal Gidwani owns a Qualis Toyota Vehicle bearing registration No. MH 34-F/2769. Madhukar Meshram, who is a regular and trusted driver, was in-charge of the vehicle. According to the petitioner, the vehicle used to be given on hire occasionally. It was so hired by Prashant Sarkar and Parimal Sarkar for the period from 10-1-2002 to 14-1-2002 for going to Kanpur (UP). The vehicle was seized at Bhiwapur by police and was found to be loaded with about 93 Kgs. of pieces of sandal wood. Apart from Prashant Sarkar and Parimal Sarkar, one Jai Narayan Ramnarayan Thakur, Maksud Khan Mumtaz Pathan and Moreshwar Patru Meshram were found to be occupying the vehicle. The police arrested the occupants, who were produced before the learned Magistrate and bailed out. The petitioners are not the accused before the Court.

2. On 5-2-2002, the petitioners prayed for release of the vehicle by making an application to the learned Judicial Magistrate First Class, Aheri. He rejected the application on 7-2-2002, whereupon the petitioners preferred a revision petition before the learned Additional Sessions Judge, Gadchiroli. He dismissed the

revision petition on 22-2-2002, whereafter the petitioners preferred Criminal Application No. 107 of 2002 before this Court, but withdrew the same.

3. On 13-3-2002, the petitioners received a notice u/s 61-B(1) and (2) of Indian Forest Act, 1927 from respondent No. 2. According to the petitioners, the notice was vague and in order to reply the notice, they needed copies of certain documents. They entered into protracted correspondence with the forest officers, seeking documents and other details, and, in the process, did not send any reply to the notice. By an order dated 23-8-2002, respondent No. 2 confiscated petitioners' vehicle.

4. Aggrieved by the order of respondent No. 2, the petitioners preferred an appeal u/s 61-D of the Forest Act before the learned Additional Sessions Judge, Gadchiroli, who dismissed the same on 2-1-2003. Aggrieved thereby, the petitioners have filed this Writ Petition under Articles 226 and 227 of the Constitution of India before us seeking to have the order confiscating the vehicle to be quashed and set aside and also a direction to have the vehicle released on in all 39 grounds enumerated in the petition.

5. The respondents have filed written submissions as also a return enumerating as to how the order passed by the Deputy Conservator of Forest was perfectly valid and why the same, having been left untouched by the learned Additional Sessions Judge, does not call for any interference from this Court.

6. We have heard Shri Khajanchi, the learned Counsel for the petitioners and Shri Badar, the learned Special Counsel for the respondent-Forest Department. Though the petitioners have enumerated as many as 39 grounds in the petition, they are repetitive and do not warrant considerations seriatim. In the course of arguments, the petitioners mainly harped upon the following aspects. According to the petitioners, the vehicle is their means of livelihood, having been taken on a loan with equated monthly instalments of Rs. 10,200/-. Therefore, no useful purpose would be served by having the vehicle confiscated, particularly when offence, if any, was committed by using the vehicle without petitioners' knowledge. In our opinion, the manner in which the petitioners have acquired the vehicle or whether it is means of their livelihood, is totally irrelevant for deciding the correctness of confiscation ordered by the Forest Officer.

7. The learned counsel for the petitioners next submitted that the principles of natural justice were violated in ordering confiscation without giving the petitioners proper opportunity to reply to the notice issued. It was submitted that the petitioners had repeatedly sought copies of certain documents from the various officers and since those documents were not supplied, the petitioners were not in a position to give a proper reply to the show cause notice. In these circumstances, the conclusions drawn by the Forest Officer while ordering confiscation, amounted to denial of opportunity to the petitioners to defend themselves.

8. The bulk of the record of the petition is replete with correspondence

exchanged between the petitioners and the Forest Officer seeking documents from the Forest Department. The first letter dated 20-3-2002 seeks seizure memo dated 13-1-2002, documents on the basis of which observations in para 2 of the notice were made, statements of accused persons, if any, recorded during the enquiry and documents on the basis of which decision to issue show cause notice was taken. The Forest Department seems to have asked petitioner No. 1 to appear before the Assistant Conservator of Forests for some enquiry. In spite of service of notices, the petitioner avoided to appear before the Officer insisting upon getting the copies of documents first. The learned counsel for the respondents pointed out that the documents sought had been duly provided to the petitioners. A short affidavit to this effect has been filed by Range Forest Officer Yadav Sadashivrao Jangde, which shows that the copies of charge-sheet, statements of Parimal Prafulla Sarkar, Moreshwar Patru Meshram and Madhukar Laxman Meshram, report of Assistant Conservator of Forests and ten other documents had been supplied to the petitioner. The petitioner himself had stated in his application dated 10-5-2002 that he had received the documents.

9. In spite of this, the learned counsel for the petitioners repeatedly harped upon denial of justice due to non-supply of documents. He could not, however, spell out as to which document in possession and custody of the respondents, relevant for replying to the show cause notice, was denied to him. Therefore, the learned counsel for the respondents was right in branding the unending quest for documents as a fishing expedition.

10. The provisions of Sections 61-A to 61-G of the Forest Act in their application to the State of Maharashtra, are a complete Code in themselves and spell out procedure to be followed in confiscation of forest produce, etc. These provisions also lay down as to what are the relevant considerations for ordering confiscation. Therefore, documents sought must have some nexus to these considerations. Clause (1) of Section 61-A of the Act enjoins the officer seizing the property u/s 52 to produce it before an Officer authorised by the State Government not below the rank of Assistant Conservator of Forests. Clause (3) of the said section lays down that where an Authorised Officer himself seizes any timber, sandalwood, firewood, charcoal or any other notified forest-produce, which is the property of the State Government, or any such property is produced before an Authorised Officer and if he is satisfied that a forest-offence has been committed in respect of such forest property, such Authorised Officer may, whether or not a prosecution is instituted for the commission of such forest-offence, order confiscation of the property so seized together with all tools, boats, vehicles and cattle, etc. used in committing such offence. In this case, it cannot be disputed for the purpose of this petition that seizure of sandal wood in the vehicle belonging to the petitioners is sufficient to indicate that a forest-offence has been committed. Since the vehicle was used for conveying the sandalwood, there can be no doubt that it was used in committing the offence. Both these facts are explicit from the documents supplied to the petitioners.

11. Before taking action u/s 61-A of the Forest Act, the Authorised Officer is enjoined to follow the procedure prescribed in Section 61-B of the Act, which lays down that no such order shall be made except after notice in writing is given to the person from whom the property is seized and after considering his objections, if any. In respect of the motor vehicle, the Authorised Officer is also enjoined to give a notice to the registered owner. Such a notice has undisputedly been given to petitioner No. 1, who is the registered owner of the motor vehicle. Clause (2) of Section 61-B of the Act is crucial to the question of confusability of the petitioner's vehicle. It reads as under :

Without prejudice to the provisions of Sub-section (1), no order confiscating any tool, boat, vehicle or cattle shall be made u/s 61-A if the owner of the tool, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, sandalwood, firewood, charcoal or any other notified forest-produce without the knowledge or connivance of the owner himself, his agent, if any and the person in charge of the tool, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

(Emphasis supplied).

A plain reading of Clause would show as to what the owner is required to establish. It is not enough for him to show that the vehicle was used without his knowledge or connivance. He has to show that it was used without the knowledge or connivance of even the person in charge of that vehicle. It may be seen that the words "the owner himself, "his agent", "if any" having interspaced by commas followed by "and the person in charge", this would require proof of absence of knowledge or connivance of the person in charge as well.

12. In the grounds made out by the petitioners, the petitioners have stated in ground No. (3) that their driver Madhukar Meshram has never been involved in any offence, muchless a forest-offence. In Annexure P-24 to the petition, on page 7, the petitioners themselves have stated that driver Madhukar Meshram was working with them for last 10-12 years and that they have full confidence in the driver, who has clean past. It is hard to believe that the driver would not notice transportation of 93 Kgs. of pieces of sandalwood packed in gunny bags picked up by the occupants of the vehicle from a hiding place about 43 kms. From Village Chaprala on Ghot-Chamorshi Road, where they had begun journey after 9 p.m. Since Clause (2) of Section 61-B of the Act prevents passing of an order of confiscation only upon proof to the satisfaction of the Authorised Officer that the vehicle was used without the knowledge or connivance of owner as also the person in-charge of the vehicle and since in this case, it has not been proved that the person in-charge of the vehicle, namely, Madhukar Meshram, had no knowledge or had not connived into such transportation, the restriction on confiscation imposed by Clause (2) of the said section would not operate.

13. The learned counsel for the petitioners drew our attention to a decision of the

Supreme Court in Assistant Forest Conservator and Others Vs. Sharad Ramchandra Kale, . In that case, the High Court had set aside the orders of confiscation on the ground that the authorities had failed to establish that the owner of the truck had any knowledge that the truck was likely to be used for transporting forest produce. The High Court had come to a factual conclusion in favour of the owner of the truck. It is not clear as to whether the provisions of Sections 61-A to 61-G of the Forest Act had become applicable when the confiscation in that case was made and were brought to the notice of the Court. Sub-section (2) of Section 61-B of the Act prevents a Forest Officer from passing an order of confiscation, if the owner proves to the satisfaction of the authority that he had no knowledge, etc. Thus, the burden to prove that the vehicle was used without his knowledge is on the owner and not on the authority. We believe that when the High Court set aside the order of confiscation in Sharad Ramchandra Kale's case on the ground that the authorities had failed to establish the knowledge, either the law in force at the time of confiscation required the authorities to prove such knowledge, or, if the provisions of Sections 61-A to 61-G of the Forest Act, which came into force on 1-6-1985, did apply, then they were not brought to the notice of the Court. There is nothing in the judgment relied on to show that the provision was interpreted by the Court to cast burden on the authorities.

14. The learned counsel for the petitioners also relied on a decision of the Division Bench of this Court in Inderjit Singh v. State of Maharashtra reported in 1990(3) CrI 779. According to him, in the present case, just as in Inderjit Singh's case, the show cause notice issued by the authorities is defective, depriving the petitioners of a fair opportunity to contest it. In Inderjit Singh's case, Truck No. MTG-1592 was seized with a log of Anjan tree on 2-4-1988. The seizure was preceded by complaint dated 21-3-1988. Notice had been issued u/s 61-B of the Forest Act and after hearing the owner, confiscation was ordered u/s 61-A(3) of the Forest Act. This resulted in an appeal being filed u/s 61-D of the Act. It was contended in that case that only one log of wood was seized, which amounted to minor offence. The notice did not recite that the petitioners had been indulging in such illegal activities for a long time. But the order passed by the Authorised Officer indicated that the Authorised Officer concluded that the petitioners had been indulging in illegal activities of cutting and transporting timber in breach of the rule, i.e. without obtaining any transit pass, for a long time. This was the reason why the Bench found notice to be defective.

15. In this context, the Division Bench also observed that the provisions of Section 61-A(3) of the Forest Act clearly give a discretion upon the Authorised Officer as to whether to confiscate the vehicle used or not. The Court further observed that while exercising this discretion, all relevant aspects, such as gravity or extenuating factors, etc., would have to be taken into consideration, keeping in mind the object of the said provision, namely, to prevent exploitation of forest produce. The Court, therefore, proceeded to quash the order, which was vitiated by basic error of non-compliance with the principles of natural justice.

16. Excepting for repeatedly harping upon non-supply of documents sought by the petitioner, without showing as to how they were relevant for making up his defence, the petitioner has not been able to point out any defect in the notice. The petitioner has also not been able to point out that the Authorised Officer has made any observation de hors the show cause notice. Therefore, we feel that keeping in mind the object of the provision highlighted by the Division Bench deciding Inderjit Singh's case, we would consider the validity and propriety of action taken by the Deputy Conservator of Forests.

17. Section 61-A(3) of the Forest Act clothes the Authorised Officer with a discretion to confiscate or not. In Inderjit Singh's case, there was only one log of Anjan wood, which is not a very important forest produce, being transported. Secondly, the Authorised Officer in that case had ordered confiscation on considerations extraneous to the show cause notice. Had he acted within the four-corners of the notice issued by him, may be his action would not have attracted the observations made by the Division Bench.

18. While exercising constitutional jurisdiction of judicial review and superintendence over the subordinate Courts, a Constitutional Court may undertake a scrutiny to find out whether the authority has correctly exercised the jurisdiction vested in it. This jurisdiction is merely supervisory and not for correcting errors of law and fact committed by the subordinate authorities. We have to examine whether the discretion vested in the Officer had been properly exercised by him. We do not see as to why the Officer should not have ordered confiscation, particularly when the petitioners had not placed any reply. When the Legislature, in its wisdom, has left the matter to the discretion of the authority, unless the discretion is shown to have been exercised in a perverse manner, or with mala fides or to defeat the objects of the legislation, interference by a Constitutional Court may not be warranted. In this case, we do not see, any mala fides or perversity on the part of the Authorised Officer or the learned Additional Sessions Judge, who heard appeal against the order of the Authorised Officer.

19. The learned counsel for the petitioners relied on the decision of our High Court in the case of Laxman Kisan Mundhe and others Vs. The Conservator of Forest, Thane and others, , wherein the proceedings for confiscation of a truck found transporting 154 logs of teak wood worth Rs. 79,000/-, were initiated and the truck was confiscated. The revision against that order came to be dismissed and, therefore a writ petition was filed. It was urged before the Court that the petitioners had engaged the driver only eight days before the commission of offence and, therefore, knowledge of the offence could not be attributed to the petitioners. In that case too, reference to provisions of Section 61-B of the Forest Act is not made. In any case, the facts of the case are decidedly distinguishable. The petitioners had on their vehicle their own trusted driver working for them for a long time Hence, decision in Laxman Kishan Mundhe's case would not help the petitioners so far as the requirement of knowledge is concerned.

20. The learned counsel for the respondents drew our attention to a decision of this Court in *State of Maharashtra v. Vinayak Dagadu Jadhav* reported in 1995(7) Mh.LJ. 318 : 1995 Cri.L.J.798, where a vehicle bearing registration No. MCY-3930 found transporting teak wood worth Rs. 27,850/- was ordered to be confiscated by the Forest Officers. On appeal, the learned Additional Sessions Judge at Nandurbar set aside the order. It was contended on behalf of the owner of the vehicle that knowledge that the vehicle in question was to be used for transporting or conveying the forbidden goods cannot be imputed to the owner. The Court, however, rejected this argument and held that the responsibility to avoid improper use was extended to even the agent and servant of the owner of a vehicle by referring to the provision of Section 61-B(2) of the Forest Act, which speaks of the knowledge of agent and the person in-charge of the vehicle. The Court, therefore, set aside the order of the Sessions Judge and affirmed confiscation ordered by the Forest Officers.

21. The very object of making a provision for confiscation of vehicles used in transporting forest produce or wild life would be defeated if at the drop of a hat, authorities and Courts start restoring such vehicles to the owners. In an old judgment in the case of *Emperor v. Mohamad Khan and Ors.* reported in AIR 1938 Nag 365, this Court had considered the question of confiscation of cattle-herd and had observed that it was because the servants were caught and masters escaped that the salutary provision in the form of Section 55 of the Act had been introduced so that not only all produce in respect of which the offence has been committed may be seized and confiscated but also tools, boats, carts or cattle used in the commission of any such offence. This Court cannot overlook the necessity to deter the poaching in any form from the forests, which are our national heritage. We believe that it would be the duty of the authorities to enforce the relevant provisions strictly in order to discourage all illegal activities.

22. We do not find that the Authorised Officer, who ordered confiscation and the learned Additional Sessions Judge, who dismissed the forest appeal, have committed any illegality in passing the impugned orders. The learned counsel for the petitioners attempted to assail the notice because it refers to provisions of Wild Life (Protection) Act. These references do not prejudice the petitioner in giving reply to the notice. These references may have been warranted on the basis of perception of the authority about ramifications of the user of vehicle at the time of giving notice. Therefore, in our view, the impugned orders do not call for any interference in exercise of our extraordinary constitutional jurisdiction.

23. The petition, therefore, fails and is dismissed. Rule stands discharged. No order as to costs.