
(2002) 02 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 343 of 2002

B. Bhaskar, Owner of Lorry

APPELLANT

Vs

Authorised Officer-cum-Sub-Divisional Forest Officer and
Others

RESPONDENT

Date of Decision : 01-02-2002

Acts Referred:

Constitution of India, 1950 — Article 141, 142, 226, 32
Criminal Procedure Code, 1973 (CrPC) — Section 452(2), 482

Citation : (2002) 3 ALT 200 : (2002) CriLJ 1937

Hon'ble Judges : N.V. Ramana, J

Bench : Single Bench

**Advocate : M.N. Srinivasan, for the Appellant; A.A.G. and G.P., for the
Respondent**

Final Decision : Dismissed

Judgement

N.V. Ramana, J.—Both the counsel appeared and argued the matter at length and at their request, the matter is disposed of at the admission stage itself.

2. This Writ Petition is filed seeking a Writ of Mandamus to declare the seizure of the lorry bearing Registration No. AEK 2527 belonging to the petitioner, made by the 2nd respondent on 21-11-2001 with 4137 Kgs. of Red-sander logs as illegal and arbitrary and also to declare the proceedings issued by the 1st respondent dt.27-12-2001 in OR No. 162/2001-02 as illegal and void and forbid the respondents from proceeding further in pursuance of the said seizure.

3. It is the case of the petitioner that he is the owner of the lorry bearing Registration No. AEK 2527 and his lorry was engaged in carrying Sugarcane produce raised by agriculturists to M/s. Prudential Mouli Sugars, Pichattoor on hire basis, that he has specifically instructed his driver not to carry contraband articles in his lorry in violation of the A.P. Forest Act, that on his directions the vehicle was sent on 19-11-2001 to take the load of Sugarcane from agriculturists and to unload the same at the Sugar Factory of Pichattoor, that on 20-11-2001 he

was informed that his vehicle was stolen by some unknown persons when it was parked and he gave a police complaint at Manaval Nagar P.S. through his father on 20-11-2001, that he has no knowledge about the occurrence happened on 21-11-2001, that without his knowledge his lorry was seized and he has no knowledge or connivance with the said offences, that he is entirely dependent on the income of his vehicle and he has no other source of income for his livelihood, that his lorry is in good condition consisting of new tyres and is lying idle before the forest authorities and if the vehicle is continued to be detained, it will be exposed to sun and weather and the same will become rusty and its value will be diminished and hence this Writ Petition.

4. When the Writ Petition came-up for admission, learned counsel for the petitioner submitted that the petitioner has nothing to do with the forest offence alleged against him, that the petitioner will be deprived of his income if the vehicle is detained and sought to release the vehicle pending disposal of enquiry before the competent authority.

5. On the other hand, learned Government Pleader for Forests contended that it is not proper for this court to order release of the vehicle pending enquiry, that the enquiry is going and not completed before the competent authority and he placed reliance on a decision of the Supreme Court in State of Karnataka Vs. K. Krishnan, and contended that the Supreme Court in that case has deprecated the practice of ordering release of vehicles involved in forest offences pending enquiry.

6. In reply to the arguments advanced by the learned Government Pleader for Forests, it is contended by the learned counsel for the petitioner that the Supreme Court in K. Krishnan's case was considering an application u/s 482 of the Criminal Procedure Code and it is not applicable to a Writ Petition filed under Article 226 of the Constitution of India, that the jurisdiction of this court cannot be curtailed by the Supreme Court under Article 226 of the Constitution of India, that the statement made in a judgment cannot be read in isolation and out of context and in support of his contentions learned counsel relied on the decisions of the Supreme Court in (i) Additional District Magistrate, Jabalpur Vs. Shivakant Shukla, (ii) Municipal Committee, Amritsar Vs. Hazara Singh, and (iii) Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., He contends that the Supreme Court in Krishnan's case (1 supra) held that for exceptional reasons, vehicles could be permitted to be released on furnishing Bank Guarantee and the present case is one which the High Court should exercise its discretion under Article 226 of the Constitution in the petitioner's favour and release the vehicle on furnishing of Bank Guarantee, that the balance of convenience lies in favour of the petitioner since retention of the vehicle for a longer duration till the enquiry is completed would lead to the vehicle getting damaged and on the other hand, furnishing Bank guarantee would benefit the State Government, and in case it is established in the enquiry that the vehicle was involved in a forest offence, the State would not only get the benefit of

encashing the Bank Guarantee but would also be entitled to confiscate the vehicle.

7. On behalf of the respondents, learned Additional Advocate General appeared and submitted that the judgment of the Supreme Court in Krishnan's case (referred to 1 supra) is the law of the land declared by the Supreme Court and is binding on all High Courts under Article 141 of the Constitution of India, that the exercise of jurisdiction under Article 226 of the Constitution of India is discretionary and in cases, such as the present one, where a serious forest offence is alleged, the High Court should exercise self-restraint in exercising its discretion in favour of the petitioner. It is also contended that the powers of the Supreme Court under Article 142 of the Constitution are not available to the High Courts under Article 226 of the Constitution. In support of this proposition, he placed reliance on the judgment of the Supreme Court in State of Punjab and others Vs. Surinder Kumar and others, .

8. It is settled law that the power of judicial review, vested in the High Court under Article 226 of the Constitution, is an integral and essential feature of the Constitution, constituting part of its basic structure L. Chandra Kumar Vs. Union of India and others,). It is also well settled that the exercise of jurisdiction by the High Court, under Article 226 of the Constitution, is discretionary and that the power of judicial review, exercised by Constitutional Courts, is not the power to sit in appeal over each and every decision of the Executive. The High Court must exercise its discretionary powers, under Article 226 of the Constitution, with great caution and circumspection and should exercise it only in furtherance of public interest. Courts should also keep the larger public interest in mind when it is called upon to decide whether its intervention in a matter is called for or not. Only where it comes to the conclusion that overwhelming public interest requires its interference, should the court interfere. Air India Ltd. Vs. Cochin Int., Airport Ltd. and Others, . Though the powers of the High Court under Article 226 are extremely wide and no limits can be placed upon it, the discretionary powers are to be exercised subject to self-imposed limitations and not arbitrarily. As held by the Supreme Court in State of Punjab and others Vs. Surinder Kumar and others, the powers of the Supreme Court, under Article 142 of the Constitution, to make orders as may be necessary "for doing complete justice in any case or matter pending before it" is a power which the High Court does not enjoy.

9. In the light of these well-settled principles, it is relevant to recall the parameters of Article 226 of the Constitution of India vis-a-vis Article 32 of the Constitution of India.

10. In our Constitution, the founding-fathers had full knowledge of the working of various Constitutions of Democratic Countries and in that background, they have incorporated in our Constitution, not only the fundamental rights and directive principles, but have also provided for judicial review by conferring wide ranging powers on the Higher Judiciary. The High Courts were conferred powers under Article 226 to issue not just Writs but any order, direction in the nature of

a writ, not only for violation of fundamental rights but for any other purpose. Similarly, Article 32 of the Constitution confers powers of judicial review on the Supreme Court. Every citizen can directly approach the Supreme Court whenever his/her fundamental rights are infringed. The Supreme Court has been conferred the powers of appellate jurisdiction over all High Courts and also advisory jurisdiction. Article 141 of the Constitution lays down that the "law declared by the Supreme Court is binding on all courts throughout the territory of India". Article 142 of the Constitution, empowers the Supreme Court to pass such decrees or make such orders as are necessary for doing complete justice in any cause or matter pending before it."

11. The judgment of the Supreme Court in K. Krishnan's case (1 supra), was rendered while considering the provisions of the Karnataka Forest Act. In that case, six Kiralbhogi logs of forest produce, which were being illegally transported without permission and in violation of the provisions of the Karnataka Forest Act, 1963, were seized by the forest officials. In that context, the Hon'ble Supreme Court observed: State of Karnataka Vs. K. Krishnan,

"Learned counsel appear for the appellant - State has submitted and we agree that the provisions of the Act are required to be strictly complied with and followed for the purpose of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to the property seized, which is liable to confiscation, is uncalled for as the same is likely to frustrate the provisions of the Act. Before passing an order for releasing the forest produce or the property used in the commission of the forest offence the Authorised Officer or the Appellate Authority has to specify the reasons, which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimately. Generally, therefore, any forest produce and the tools, boats, vehicles, cattle, etc. used in the commission of the forest offence, which are liable to forfeiture, should not be released. This however, does not debar the officers and the authorities under the Act including the appellate Authority to pass appropriate orders under the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce, which if not protected, is surely to affect the mother-earth and the atmosphere surrounding it. The courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purpose of protecting and safeguarding both the forest and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a clean and any vehicle is seized on the allegation that it was used for committing a forest offence the same shall not normally be returned to a party till culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a court are inclined to guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a

forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forest as the same cannot be replenished for years to come.

12. A precedent is a "judicial decision, which contains in itself a principle". The underlying principle, which thus forms its authoritative element is often termed the ratio decidendi. A concrete decision is binding between the parties to it, but it is the abstract ratio decidendi, which alone has the force of law as regards the world at large". (Salmond's Jurisprudence 12th edition). In the hierarchy of courts, all courts are bound by decisions of superior courts. A single Judge of the High Court is bound by an earlier Division Bench judgment of the High Court and the Division Bench is bound by an earlier Full Bench Judgment. The High Court is bound by the decisions of the Supreme Court. Under Article 141 of the Constitution the law declared by the Supreme Court is binding on all courts I within the territory of India.

13. The present case also arises under the Forest Act and relates to an alleged offence of illegal transportation of Forest Produce. What is observed by the apex court in Para 7 of Krishnan's case (1 supra) is the ratio and is binding on all High Courts. As has been held in Amritsar Municipality's case (3 supra), even obiter dicta of the Supreme Court is binding on the High Court and it matters not whether the observations were made in proceedings u/s 482, Cr.P.C. or under Article 226 of the Constitution.

14. In Krishnan's case (1 supra), the Supreme Court has highlighted the fact that easy release of a vehicle involved in illegally transporting forest produce would embolden the offenders to repeat the offences, which should result in degradation of forests, and adversely affect the environment. It is in this context that the Supreme Court has held that courts should not normally permit the easy release of such vehicles but should only do so for exceptional reasons. The observations of the Supreme Court do not amount to curtailment of the powers of judicial review of the High Court under Article 226. It is settled law that the discretionary power of the High Court under Article 226 should be exercised only in furtherance of public interest and not as a matter of course. The observations of the Hon'ble Supreme Court in Krishnan's case (1 supra) has emphasised these settled legal principles and is not a curtailment of the power of judicial review of the High Court under Article 226. The Supreme Court has reiterated what has been held in a catena of earlier judgments that courts should exercise self-restraint, more so, when larger public interest is involved.

15. In W.P. No. 197067 of 2000 and batch, a Division Bench of this court observed as follows:

"As already observed by us, the Supreme Court in Nasu Sheikh's case (supra) indicated that if F.I.R. records circumstances and ingredients of offence alleged, the courts cannot midway interdict in the matter.

This brings us to the question of the relief. In W.P. No. 22075 of 2000 the

petitioner prayed for a direction to the respondents to release the seized black jaggery to him without furnishing any security. u/s 452(2) of Cr.P.C., pending trial of criminal offence, the criminal court is competent to release any property subject to such person executing a bond. Be that as it may, when property is seized in connection with offence involving public health and other allied matters, the High Court should be slow to pass such orders. In State of Karnataka Vs. K. Krishnan, dealing with a case of release of vehicle involved in excise offence a Division Bench of this Court held:

"It has become almost free for all that the moment there is a seizure, this Court's jurisdiction under Article 226 of the Constitution of India is invoked and on such ex parte. Statements, which petitioners make, orders to release the vehicles/goods are passed. It is necessary in all such cases to ask the petitioner why he has not moved the competent court or the authority before whom the seized goods or vehicles have been produced and why he has chosen to move this court directly. It will also be necessary in all such cases to see that a vehicle used in crime can be recycled and used a gain and again and unless there is some check created by the appropriate order in this behalf, release may contribute to the repetition of the crime thin doing any justice. The Court cannot justify its order unless all these aspects are borne in mind. The power under Article 226 of the Constitution is undoubtedly very wide. But, the Courts exercise self-imposed restrictions and apply all relevant considerations which must operate in the mind of the court while making a judicial order."

16. In W.P. No. 197067 of 2000, the Division Bench also referred to Krishnan's case (referred to 1 supra) in its judgment and observed as follows:

"We are bound by the apex ratio and are of considered opinion that in matters of excise offences, the authorities and courts should insist strict compliance with the provisions of the Excise Act."

17. It is, no doubt, settled law that statements made in any judgment cannot be read in isolation and out of context. The judgments, cited by the petitioner in this regard, reiterate this well accepted principle. What has however been held by the Supreme Court at para 7 of Krishnan's case (1 supra) is squarely applicable to the present case, which also arises under the Forest Act and relates to the offence of illegal transportation of Forest produce. The principle laid down by the Supreme Court in Krishnan's case (1 supra) cannot therefore be said to be a "statement in isolation and out of context".

18. It is true that the Hon'ble Supreme Court in Krishnan's case (1 supra) held that "in exceptional case courts could direct release of the vehicle on furnishing bank guarantee". The question, which would then arise, is whether the present case is an exceptional one. According to the endorsement of the Sub Divisional Forest Officer, Tirupati, dated 27-12-2001, the seized lorry was carrying 170 red sander logs weighing 4137 Kgs. The said lorry was seized at 7.15 a.m. on 21-11-2001 and the Panchanama was conducted at 8 a.m. on the same day. The

petitioner contends that the vehicle was stolen on 20-11-2001 at 8 p.m. and that he had filed a complaint before Sub-Inspector of Police, Manavalnagar, Tiruvallur on the same day. However, the endorsement of the Inspector Police shows that a copy of the complaint was received on 18-11-2001 (sic.) and the possibility of lodging the said complaint after the incident by ante-dating the same, cannot be ruled out. All these are, however, matters of enquiry. As has been stated in the endorsement of the Sub Divisional Forest Officer, Tirupati, dated 27-12-2001, the request of the Petitioner for release of the vehicle was not considered, since the case was under investigation by the Forest Range Officer, Srikalahasti. The allegations in this case are serious and would not constitute "exceptional reasons" warranting exercise of discretion in favour of the petitioner.

19. Whether or not retention of vehicle is more beneficial than release thereof on being furnished bank guarantees is a matter for the authorities and not for the petitioner, whose vehicle is alleged to be involved in a serious forest offence, to decide. Balance of convenience does not lie in releasing the vehicle in favour of the petitioner and as such no order for its release can be passed. It cannot, however, be denied that prolonged retention of the vehicle could result in the vehicle itself being damaged and if eventually in the enquiry, the petitioner is absolved, he would still be put to further loss for the damage caused to the vehicle due to its prolonged retention by the authorities concerned. It is, therefore, essential that the enquiry be completed, as expeditiously as possible, preferably within a period of two months from the date of receipt of a copy of this order.

20. Subject to the above observations, the Writ Petition is dismissed. No costs.