
(2016) 07 PAT CK 0134

In the Patna High Court

Case No : Letters Patent Appeal No. 126 of 2016 in Civil Writ Jurisdiction Case No. 15655 of 2013

Bijay Yadav

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 27-07-2016

Acts Referred:

Forest (Bihar Amendment) Act, 1989 — Section 33, Section 41, Section 42

Citation : (2016) 3 BBCJ 100 : (2016) 6 FLT 714 : (2016) 4 PLJR 989

Hon'ble Judges : I.A. Ansari, ACJ. and Mr. Chakradhari Sharan Singh, J.

Bench : Division Bench

Advocate : Mr. Tuhin Shankar, Mr. Shashi Kant Kumar and Mr. Rajeev Ranjan, Advocates, for the Appellants; Mr. Avnish Nandan Sinha, GP-11, for the Respondents

Final Decision : Dismissed

Judgement

I.A. Ansari, A.C.J. - This intra Court appeal has been preferred against the order, dated 22.12.2014, passed, in C.W.J.C. No. 15655 of 2013 and analogous cases, by a learned single Judge of this Court, disposing of the writ petitions with a direction that the appeal preferred against the order of confiscation, dated 31.01.2012, be disposed of expeditiously and preferably within three month from the date of receipt/production of a copy of this order in accordance with law after giving an opportunity of hearing to the contesting parties.

2. The facts, leading to filing of the present Letters Patent Appeal, may, in brief, be set out thus,

(i) On 06.07.2011, the Officer-in-Charge, Jhajha Police Station, seized, at Baijla More near village-Tilwaria, three tractors allegedly carrying metal chips without requisite transit pass/challan and committing thereby forest offence, under Sections 33, 41, 42 of the Indian Forest (Bihar Amendment) Act, 1989, and the drivers thereof, namely, Bijay Yadav, Muso Yadav and Arvind Yadav, were arrested. A seizure list was drawn and an office report was submitted to the Chief

Judicial Magistrate, Jamui, and accordingly Case No. 214C-2/2011, under Sections 33, 41 and 42 of the Indian Forest (Bihar Amendment) Act, 1989, was instituted against the said drivers. The drivers, at the time of interrogation, by the Forest Officers gave the names of Bambam Yadav and Ajay Yadav as owners of tractors, though the said vehicles were owned by Brahmdeo Yadav and Vijay Yadav. The owner of tractor, bearing Registration No. BR-46A-6862, is petitioner No. 1, namely, Bijay Yadav; the owner of tractor, bearing Registration No. BR-46A-7776, is petitioner No. 2, namely, Kapildeo Yadav, and the owner of tractor, bearing Registration No. BR-46A-4454, is petitioner No. 3, namely, Brahmdeo Yadav.

(ii) By the order, 31.01.2012, the Authorized officer-cum-Divisional Forest Officer, Jamui (respondent No.4), confiscated the said seized tractors on the ground that challans/receipts, dated 06.07.2011, were defective and, therefore, the said metal chips were being carried in violation of law.

(iii) Aggrieved by the order of confiscation, dated 31.01.2012, an appeal was preferred, which gave rise to Forest Appeal No.01 of 2012 before the District Magistrate, Jamui, who, upon hearing the appeal, made an order, dated 19.10.2012, setting aside the confiscation order, dated 31.01.2012.

(iv) Thereafter, the Regional Forest Officer, Jamui Jhajha Forest Area, District-Jamui, filed a revision before respondent No.2, namely, the Secretary, Environment and Forest department, Government of Bihar. This revision was disposed of on 05.03.2013, whereby the order, dated 19.10.2012, passed by the appellate authority was set aside and the order of confiscation, dated 31.01.2012, passed by the authorised officer was upheld.

(v) Aggrieved by the revisional order, dated 05.03.2013, a writ petition was filed, under Article 226 of the Constitution of India, calling in question the correctness of the order, dated 05.03.2013.

3. By order, dated 22.12.2014, the learned single Judge has disposed of the writ petition with direction that the appeal preferred against the order of confiscation, dated 31.01.2012, be disposed of expeditiously and preferably within three month from the date of receipt/production of a copy of this order in accordance with law after giving an opportunity of hearing to the contesting parties, this appeal has been preferred on the ground that the learned single Judge has erred in law in directing the disposal of the appeal; whereas the appeal was already disposed of and the appellate order passed in appeal has been set aside by the revisional authority and it was, therefore, the revisional order, which had been challenged in the writ petitions.

4. We have heard Mr. Tuhin Shankar, learned Counsel, appearing on behalf of the appellant, and Mr. Avnish Nandan Sinha, learned Government Pleader No.11, appearing for the respondents.

5. The question, therefore, which falls for consideration is whether the order of

confiscation, dated 31.01.2011, was sustainable in law. The correct answer to this question was related to the question as to whether it was the appellate order which was legal or it was the revisional order, which has been correctly passed. Bearing in mind what is indicated above, let us, now, turn to Section 49 of the Indian Forest (Bihar Amendment) Act, 1989. The relevant provisions of Section 49, which prescribe the penalties and procedure in respect of forest offence, including confiscation, read as under:

"49. Seizure of property liable to confiscation - (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce together with all tools, boats, motorised boats, vessels, cattle, carts, rafts, machinery, vehicles, trucks, ropes, chains or any other implements, articles or materials used in the commission of such offence may be seized by any Forest Officer not below the rank of a Forester or any Police Officer not below the rank of a Sub-Inspector or Police.

* * *

(4) Subject to the provisions of Sub-sections (5) and (6), where the Authorised Officer upon production before him of the property seized or upon receipt of a report about seizure as the case may be, and after such personal inspection of verification as he may deem fit and necessary, is satisfied that a forest offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded therein, confiscate the forest produce so seized together with all tools, vehicles, cattle, trucks, motorised boats, boats, carts, machineries, rafts, vessels, ropes, chains or any other implements or articles used in committing such offence. A copy of the order of confiscation shall, without any undue delay, be forwarded to the Circle Conservator of Forests of the Circle in which the forest produce has been seized and the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.

(5) No order confiscating any property shall be made under the preceding provisions unless the Authorised Officer--

(a) Sends an intimation in the prescribed form about the initiation of the proceeding for confiscation of property to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;

(b) Issue a notice in writing to the person from whom the property is seized and to any other person who may appear to the Authorised Officer to have some interest in such property and in cases of motorised boats, vessels, vehicle trucks etc. having a registered number to the registered owner thereof;

(c) Affords to the persons referred to in Clause(b) above a reasonable opportunity of making a representation within such reasonable time as may be specified in the notice, against the proposed confiscation; and

(d) Gives to the Officer effecting the seizure and the person or persons referred to in Clause (b) or (c) above, a reasonable opportunity of being heard on a date

or dates to be fixed for the purpose.

(6) Notwithstanding anything contained in the foregoing provisions, no order of confiscation under Sub-section (4) of any tools, boats, motorised boats, vessels cattle, carts, rafts, machinery, vehicles, trucks, ropes, chains or any other implements, articles (other than timber or forest produces shall be made if any person referred to in Clause (b) of sub-section (5) proves to the satisfaction of the Authorised Officer that such tools, vehicles, machinery, trucks, vessel boats, motorised boats, rafts, carts, cattle, ropes, chain or any other implements or articles were used without his knowledge or connivance or abetment or as the case may be, without the knowledge or connivance or abetment of his servant or agent and that all reasonable and due precautions had been taken against the use of the object aforesaid for the commission of forest offence."

Indian Forest (Bihar Amendment) Act, 1989.

6. A careful reading of Section 49(1) shows that when there is reason to believe that a "forest offence" has been committed in respect of any "forest produce", then, a forest officer, not below the rank of a Forester, is empowered to seize not only the "forest produce", but also, amongst others, all the tools, the vehicle, etc., which may have been used in the commission of such "forest offence". Section 49(6) shows that an order of confiscation of such tools, vehicles, etc., cannot be made if the person, proceeded against in a confiscation proceeding, proves, to the satisfaction of the forest officer, that such tools, vehicle, etc. were used without his knowledge or connivance or abetment or, as the case may be, and without the knowledge or connivance or abetment of his servant or agent and that all reasonable and due precautions had been taken against the use of the object(s) aforesaid for the commission of forest offence.

7. From a minute reading of Section 49(6), it becomes clear that in order to avoid confiscation of a vehicle, it is not enough for the owner of the vehicle to show that the vehicle was used in the commission of "forest offence" without his knowledge or connivance or abetment; rather, the owner of the vehicle must also show that all reasonable and due precautions had been taken against the use of his vehicle for the commission of any forest offence.

8. In the case at hand, it had been contended, in the confiscation proceeding, that the vehicle, in question, was not found to have been carrying "forest produce", i.e., metal chips, without authority of law and even if the forest offence was, thus, committed, the owner of the vehicles, in question, was not liable inasmuch as the vehicle was carrying the said forest produce without his knowledge.

9. In our considered view, however, if it is found that the said metal chips were being carried in the vehicle aforementioned without requisite transit permit, a "forest offence" would be deemed to have been committed. In such a case, it would not be enough for the owner of the vehicle, i.e., the appellants, to show that their vehicles were used for commission of forest offence without their

knowledge or connivance or abetment; rather, they must also prove that they took all reasonable and due precautions to ensure that their vehicle was not used for commission of such forest offence.

10. In the present intra-Court appeal, though it has been the case of writ petitioners-appellants that the materials, in question, were carried in their vehicle without their knowledge or connivance or abetment, what is of utmost importance to note is that there is neither any assertion nor any evidence, direct or indirect, showing that the appellants took all reasonable and due precautions to ensure that their vehicles were not used for committing "forest offence". Nowhere, in their reply to the notices issued in the said confiscation proceeding, nor in their evidence, the appellants, as owners of the vehicle, had contended that they had given clear instructions to the drivers, who were, admittedly, driving the vehicles, that the said vehicles must not be used for carrying any "forest produce" without requisite transit permit.

11. In the backdrop of the law, which we have pointed out above, when we consider the revisional order, we notice that there is no assertion that metal chips were being carried without the knowledge of the writ petitioners-appellants and that the appellants failed to ensure that the vehicles were not used in carrying any forest produce without requisite transit permit.

12. In the revisional order, what has been alleged is that the Officer-in-Charge, Jhajha Police Station, saw three tractors coming towards Baijla More, during patrolling, on 06.07.2011. After seeing the Patrolling Party, the drivers of the above mentioned tractors, left the vehicles and started running away, but were held by the patrolling party. No valid papers were shown to the police at the place of the incident. The matter was investigated after seizing the tractors and on the basis of the investigation, case No.6 of 2011, (State of Bihar v. Bijay Yadav), dated 31.01.2012, was instituted.

13. The revisional order points out that the appellate authority had failed to take note of the fact that there was a prior information of illegal mining in the reserved forest area of Madhwa and during investigation the proof of illegal mining of 450 Square Feet metal stone has been found and, further, it was the specific finding of the District Mining Officer, as recorded in the revisional order, that all the three chalans were defective inasmuch as the chalans neither mentioned description of mine nor bore the number of vehicles. In fact, even the numbers provided in the vehicles, in question, were found to be defective and, thus, the mining officer's report did clearly show that the three chalans did not mention the names of minerals and recorded the registration number of vehicles incorrectly, leading to the inference that the metal chips were being carried without legally sustainable chalans/transit pass.

14. Because of the reasons so assigned, as indicated above, the revision was allowed, the appellate order, dated 19.10.2012, was set aside and the order of confiscation, dated 31.01.2012, was upheld.

15. In the face of what had been pointed out above, we are clearly of the view that the appellants herein, having not at any stage even faintly asserted that they had taken any reasonable care and precaution to ensure that the vehicles were used in illegally carrying any forest produce, cannot escape confiscation of the vehicle.

16. In the result and for the foregoing reasons, this appeal is disposed of by holding that the revisional order, dated 05.03.2013, passed in Forest Revision No.11 of 2012, passed by respondent No.2, namely, Secretary, Environment and Forest Department, Government of Bihar, is legally correct and cannot be interfered with.

17. This appeal as well as the writ petition is accordingly dismissed.

18. However, there shall be no order as to costs.

Chakradhari Sharan Singh, J. - I agree.