
(1996) 04 OHC CK 0029
In the Orissa High Court
Case No : O.J.C. No. 4094 of 1995

Divisional Forest Officer-cum-Authorised Officer, Keonjhar
Forest Division

APPELLANT

Vs

District Judge and Another

RESPONDENT

Date of Decision : 19-04-1996

Acts Referred:

Constitution of India, 1950 — Article 227
Orissa Forest Act, 1972 — Section 57, 63

Citation : (1996) 82 CLT 7 : (1996) 1 OLR 557

Hon'ble Judges : Dipak Misra, J;A. Pasayat, J

Bench : Division Bench

Advocate : Additional Government Advocate, for the Appellant; P. Palit, S. Palit, L. Jena, A. Padhi and S. Sen for opp. party No. 2, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—In this writ application order passed by the learned District Judge, Keonjhar in an appeal directed against the order of Authorised Officer-cum-Divisional Forest Officer, Keonjhar (in short "Authorised Officer") rejecting prayer for release of the vehicle (a jeep) bearing registration No. ORX 681 In terms of Section 57 of the Orissa Forest Act, 1972 (in short, "the Act") is under challenge.

2. factual position is undisputed, and detailed reference to it is unnecessary. The aforesaid vehicle was seized on 20-2-1994 by the officials of Forest Department on the allegation that it was carrying 167 pieces of Bija Sawn timber and one piece of Kasi sawn timber. A proceeding was Initiated before the Authorised Officer. Prayer was made for interim release of the vehicle in terms of Section 57 of the Act, by the owner of the vehicle. The prayer was rejected. An appeal was carried before the learned District Judge, which was numbered as Miscellaneous Appeal No. 39 of 1994. By the impugned order, the miscellaneous appeal was allowed and release of the vehicle was directed.

3. Referring to a decision of this Court in Divisional Forest Officer, Keonjhar, v.

Jitendra Kumar Mohanty and Anr. : (1993) 6 OCR 454, it was held that the District Judge has, the power to direct release of the vehicle on suitable terms during pendency of an appeal before him or confiscation proceeding.

4. Stand of the learned counsel for State in support of the application is that the appeal was misconceived, and in any event the learned District Judge had no power to direct release of the vehicle during pendency or a confiscation proceeding, Mr. P. Palit, learned counsel appearing for the applicant few release of the vehicle submitted that the ratio of the aforesaid reported case is squarely applicable to the facts of the present case, and therefore, the order passed by the learned District Judge needs no Interference.

5. Appeal is provided u/s 63 of the Act against the orders under Sections 59, 60 and 61, Same reads as follows :

"63. Appeal from orders under Sections. 59, 60 or 61 --The officer who made the seizure u/s 56 or any of his official superiors, or any person claiming to be interested in the property so seized may, within one month from the date of any order passed u/s 59, Section 60 or Section 61 prefer an appeal to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final."

Apparently an order passed u/s 57 of the Act is not appealable in terms of Section 63. Section 59 deals with confiscation of forest produce, tools etc. in respect of which a forest offence has been committed. Section 60 deals with disposal on conclusion of trial for forest offence of produce in respect of which it was committed and Section 61 deals with the procedure when offender is not known or cannot be found. The reported case on which reliance was placed by the learned District Judge related to a case of District Judges power for release of vehicle during pendency of an appeal before him. Learned District Judge quoted a paragraph of the reported decision in his order in the following terms.

"5. In this context it is profitable to note here in the case reported in (1993) 6 OCR 454 (Divisional Forest Officer, Keonjhar v. Jitendra Kumar Mohanty and Anr.) which is as follows : An order of confiscation may entail deprivation of the vehicle from the appellant. It on one hand may result in consequence of the vehicle being taken away from him if he is in possession of the same and may also result in disposal of it. The consequences as such may be that even if the appeal succeeds, yet the confiscation having been put into effect his success may become fruitless the vehicle having been sold. The power hence must be conceded to the District Judge for taking such measures regarding as is necessary so as to prevent the appeal becoming infructuous by happening of events which become fait accompli. Thus as an absolute proposition of law District Judge has the power to direct release of the vehicle on suitable terms during the pendency of the appeal, or confiscation proceeding.

Be that as it may the jeep is undoubtedly a valuable property of the appellant since its value is more than one lakh according to the present market rate. In the

event the jeep is left uncared for recklessly its value would undoubtedly be depreciated thereby putting the appellant to substantial loss."-

6. We are shocked to find that the underlined portion is not a part of the Judgment. We have called for and perused the original records of the case and the reported Judgment. We do not find the underlined portion in the Judgment. If there is a full-stop after the word "appeal" standing immediately prior to the underlined portion, the expression or confiscation proceeding after the full-stop appears to be an insertion. The same on the face of it is out of place. It is strange that the decision has been misquoted and addition has been made while quoting the Judgment-which was not there in the Judgment itself or in the journal reporting it. The underlined portion makes a good deal of difference. The learned Dist. Judge has strayed beyond his jurisdiction in directing release of the vehicle in indefensible grounds. The appeal itself was not maintainable and, therefore, the question of granting the prayer for release during pendency of confiscation proceeding was unwarranted and unauthorised. Learned District Judge should have been careful while quoting the Judgment. Caution should be exercised to find out that there is correct extraction. Had that been done in the case at hand, the present litigation could have been avoided. Since the appeal itself was misconceived, the learned District Judge should not have entertained it. Judged from any angle his order cannot be maintained. The appellate order dated 4-3-1995, copy of which is annexed as Annexure-2 to the writ application is quashed.

The writ application is allowed. No costs.

D. Misra, J.

I agree.