

(2002) 01 KAR CK 0035

In the Karnataka High Court

Case No : Criminal Revision Petition No. 467 of 1997

D.S. Vijaya Kumar

APPELLANT

Vs

Deputy Conservator of Forest, Hassan Division, Hassan

RESPONDENT

Date of Decision : 09-01-2002

Acts Referred:

Karnataka Forest Act, 1963 — Section 62, 71 A

Citation : (2002) ILR (Kar) 1375 : (2002) 2 KarLJ 537 : (2002) 4 KCCR 2446

Hon'ble Judges : H.N. Narayan, J

Bench : Single Bench

Advocate : Kashinath Rao Patil, for the Appellant; M. Marigowda, Addl. State Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Narayan, J.—This revision is directed against the order of the authorized Officer, Hassan Division, Hassan dated 15-12-1995 in Case No. CI.Amo.CR. 55/89-90 confirmed in Cri. A. No. 4 of 1996, dated 25-6-1997 on the file of the Additional District and Sessions Judge, Hassan. The authorized officer - Deputy Conservator of Forest, Hassan Division, by the impugned order confiscated the lorry bearing Registration No. CTS 9243 claimed to be the property of the petitioner which order is confirmed by the learned Sessions Judge in appeal.

2. Brief facts leading to this revision are as follows:

The lorry bearing Registration No. CTS 9243 which was in the ownership of the petitioner was taken on hire for the purpose of transporting oranges. It is the case of the petitioner that the driver and the cleaner of the said lorry came and informed on the evening of 31-12-1989 that somebody committed theft of the lorry. Accordingly, the petitioner lodged a complaint before the jurisdictional police. In the meantime, the lorry in question which was seized by the District Forest Officer and his staff near Vatehole Nale Cross near Alur-Chikkodi Road, initiated confiscation proceedings u/s 71-A of the Karnataka Forest Act, 1963

("the Act" for short). Notice of this proceeding was served on the petitioner who is the owner of the lorry, who entered appearance and filed his objections contending that the lorry was taken away by some thieves on the night of 30-12-1989 and that he was not aware of the fact that the lorry in question was used for transporting teak cut logs and the property seized was not the property of the forest; he has no jurisdiction to initiate confiscation proceedings u/s 71-A of the Act. The authorized officer held an inquiry while the forest officials appeared as prosecution witnesses in proof of the seizure of the lorry which was found transporting teak logs, the petitioner herein who entered appearance through his Advocate failed to adduce any evidence in support of his defence. Considering the evidence on record, the authorized officer found that there was sufficient material that a forest offence is believed to have been committed, ordered confiscation of the seized vehicle. Aggrieved by the said order, the petitioner preferred an appeal u/s 71-D of the Act in Cri. A. No. 4 of 1996 on the file of the District and Sessions Judge, Hassan who on consideration of the rival contentions found no good grounds to accept the contentions canvassed on behalf of the appellant and therefore, confirmed the order of confiscation. The petitioner has assailed the legality and correctness of these two orders in this revision.

3. The specific grounds on which the impugned orders are assailed are these:

- (a) That the learned Sessions Judge and Deputy Conservator of Forests, erred in confiscating the vehicle, because the owner as well as the driver did not commit any offence;
- (b) If the vehicle is taken away by thieves and they were transporting forest produce, the owner cannot be held liable;
- (c) Section 71-A of the Karnataka Forest Act is not applicable in this case;
- (d) The alleged offence is compoundable. Therefore, the order of confiscation is bad in law.

4. I have heard the arguments of Sri Kashinath Rao Patil, learned Counsel for the petitioner and Sri M. Marigowda, learned Additional State Public Prosecutor for the State and perused the records. The learned Counsel for the petitioner apart from reiterating the grounds of revision questioned the jurisdiction of the Deputy Conservator of Forest, Hassan Division, for initiating confiscation proceedings on the ground that the vehicle in question was not seized within his jurisdiction and in the absence of criminal case against the driver or the owner, as the case may be, and in the absence of conviction of the driver or the owner for forest offence, the authorized officer has no jurisdiction to pass the order of confiscation of the vehicle. The learned Counsel has also contended that the property can only be released by the Magistrate before whom a report of confiscation was made and an order of acquittal or not filing a criminal case amounts to no proof of the forest offence, Therefore, the authorized officer has no jurisdiction to pass the order of confiscation of the vehicle.

5. Learned Counsel for the petitioner has referred to a judgment rendered by this Court in the case of Mohammed Dastagir v State by Sub-Inspector of Police and Anr., Criminal Revision No. 10 of 1990, DD: 14-2-1990, found that the contentions raised really required to be decided by a larger Bench as there were conflicting opinions expressed by two different Courts. However, the learned Additional State Public Prosecutor has justified the impugned orders. This is one of the contentions which needs consideration in this revision also. Therefore, the precise questions which call for consideration in this revision are:

(1) Whether there is a bar for initiating confiscation proceedings against the accused persons?

(2) Whether non-filing of a criminal case or order of acquittal of accused in the criminal case disables the authorized officer to initiate the proceedings u/s 71-A of the Act?

(3) Whether the impugned orders are justifiable in the light of the various contentions canvassed in this revision?

6. Facts of this case are undisputed. The vehicle in question confiscated by the authorized officer was in the ownership of the petitioner. It is also not in dispute that it was seized on the morning of 31-12-1989 near Vatehole Nale Cross near Alur-Chikkodi Road within the jurisdiction of the Divisional Forest Officer, Hassan Division, Hassan. The learned Counsel's contention that the vehicle was seized within the jurisdiction of Chikkamagalur Divisional Forest Officer is incorrect and is contrary to the facts of this case. The jurisdiction of Divisional Forest Officer, Hassan Division, was not questioned at any stage except in this proceedings by the learned Counsel at the time of arguments. In fact the revision is not challenged on that ground.

7. It is the specific case of the prosecution that the Divisional Forest Officer, Hassan Division, and his staff were keeping watch over the vehicles coming from Chikkamagalur-Moodigere side and at about 6 a.m. on that day, they observed a mini lorry coming from that side, they intercepted the said vehicle, but the vehicle did not stop. The vehicle sped away from the place, it was taken to a far off distance and the occupants jumped out of the vehicle and disappeared in the forest. The forest officials were unable to catch them. They noticed that teak cut sized logs were loaded in the lorry. They conducted a seizure mahazar. Though no such contention is urged in the revision and before the Courts below, Sri Kashinath Rao Patil has contended that the properties seized were not marked and there is no strict compliance of the judgment of this Court in Hasanabba and Others Vs. The State of Karnataka, .

8. It is specifically pointed out by the Courts below that the teak logs were marked by the Divisional Forest Officer at the time of seizure and the marks could be seen on the logs. Therefore, this contention in my opinion has no merit.

9. It is undisputed that the produce seized was of forest produce and at no time

it was contended that the lorry in question was not used for transporting the teak cut sizes. However, the learned Counsel for the petitioner contended that no forest offence in this case is committed. "Forest offence" u/s 2(5) of the Act means an offence punishable under this Act or under any rule made thereunder. "Forest produce"-includes u/s 2(7):

"(a) the following whether found in or brought from a forest or not, that is to say,--

timber, charcoal, caoutchouc, catechu, sandalwood, lootikai (Capparis Mooni), wood oil, sandalwood oil, resin, rubber latex, cocoa-beans or pods, natural varnish, bark, lac, mahua or ippe (Bassia latifolia) flowers and seeds, seed of Prosopis juliflora, kuth and temburni or tupra (Diospyros Melanoxylon) leaves, rosha (Cymbopogon Martini) grass and oil and myrabolams (Terminalia Chebula Terminalia Belerica and Phyllanthus Emblica, Ramapatre and Shigekai and

(b) the following when found in, or brought from, a forest that is to say,

(i) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees;

(ii) being plants not trees (including grass, creepers, reeds and moss), and all parts or produce of such plants;

(iii) wild animals and pea fowls and skins, tusks, horns, bones, silk cocoons, honey and wax and all other parts or produce of wild animals, pea fowls and insects; and

(iv) peat, surface oil, rock, and minerals (including limestone) late rite, mineral oils and all products of mines or quarries; and

(v) such other products of forests as the State Government may, by notification, declare to be forest produce".

10. It is not the case of the petitioner that this produce was brought from a private land or private persons. Admittedly, the petitioner was not the owner of the seized article. Therefore, u/s 62 of the Act 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, vehicles or cattle used in committing any such offence, may be seized by any Forest Officer or Police Officer. Clause (3) of Section 62 empowers every officer seizing any property under this section shall place on such property or the receptacle or vehicle (if any) in which it is contained a mark indicating that the same has been so seized, and shall, as soon as may be make a report of such seizure-

(a) where the offence on account of which the seizure has been made is in respect of timber, ivory, firewood or charcoal which is the property of the State Government or in respect of sandalwood, to the concerned authorized officer u/s 71-A; and

(b) in other cases, the Magistrate having jurisdiction to try the offence on account of which the seizure has been made;

Provided that when the forest produce with respect to which such offence is believed to have been committed is the property of Government, and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be a report of the circumstances to his official superior.

11. Therefore, the provisions of Sub-clause (b) of Clause (3) of section indicates without any ambiguity that officer seizing any property u/s 62 has to report to the concerned authorized officer u/s 71-A and in other cases apart from Sections 86 and 87 of the Act or offences under the Act, the Magistrate has the jurisdiction to try the offence on account of which the seizure has been made.

12. The important question which required to be considered is whether absence of prosecution before the Magistrate for a forest offence or where criminal prosecution results in an order of acquittal takes away the jurisdiction of the authorized officer to initiate proceedings u/s 71-A and confiscate the vehicle under the said provision. This question cropped in an unreported judgment of this Court in Cri. Revision No. 10 of 1990. That was a case where the prosecution was launched against the driver and the owner of the vehicle against whom confiscation proceedings were also initiated u/s 71-A of the Act before the authorized officer. The case was prosecuted for offences under Sections 379 and 411 of the IPC. The learned Judge in that case relied on another decision of this Court in the case of Muthaya Moily Vs. Dakshina Kannada, , in which it was held that the decision of a Civil or Criminal Court in respect of an offence would be binding on quasi-judicial authorities in matters pertaining to identical question. In that case, the RTO has suspended the Registration Certificate of the vehicle involved for the offence alleged to have been committed under the Karnataka Motor Vehicles Taxation Act, 1957. The petitioner was acquitted and the Court found that, that order of acquittal binds the RTO and the order passed by him was subject to the result of the prosecution launched against the person concerned. Reliance was also placed in that case to an earlier decision of this Court in the case of Hasanabba, supra, wherein the following observation was made by the Court:

"The power of Courts regarding disposal is taken away and vested in a statutory authority called the authorized officer. Though the Courts do not have powers to pass orders regarding the properties, it is absolutely essential to get the property seized identified at the trial of the accused. This is one of the basic requirements to prove the case. The prosecution has to ensure this if at all it has to succeed. Firstly, the seizure, if any, will have to be in accordance with the available guidelines. Any orders that may be passed by the authorized officer confiscating or otherwise disposing of the property may be made conditional saying that, that order will become effective after the final termination of the prosecution, if any, launched or pending. Even if the property is required to be disposed of u/s 68 of the Act, it may be necessary, if it is possible, to keep some sample and to bring

that fact to the notice of the Court also in addition to performing his (Forest Officer"s) official superior".

It is thus observed in Mohammed Dastagir"s case cited supra, that, "that decision may be final if the person from whom the vehicle is produced was seized is not prosecuted and the authorized officer passes an order u/s 71-A of the Act. If however, the person concerned is also prosecuted in a Criminal Court and if the Criminal Court acquits him, anomalous position of maintaining the order passed by the authorized officer in the face of the acquittal of the person concerned in the criminal case cannot be allowed to continue. Ultimately, the order of judicial authority will have to prevail over the quasi-judicial authority like the authorized officer in the instant case".

13. With great respect, it is difficult for me to concur with the last observation made therein. Where two parallel proceedings are initiated, one criminal and another quasi-judicial which is civil in nature, an order of acquittal in a Criminal Court is not binding on the quasi-judicial authority as the proceedings before the quasi-judicial authority is separate and independent. The Division Bench of this Court had an occasion to consider a similar question with reference to the Motor Vehicles Act where the driver of the vehicle who was prosecuted for negligent driving causing injury or death of a third party pleaded guilty and convicted on that plea is admissible in evidence. But an order of acquittal of the driver for negligence is neither admissible in evidence before the Claims Tribunal nor it is binding on the Tribunal. However, the judgment in Mohammed Dastagir"s case, supra, is rendered without reference to the judgment of the Supreme Court in Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and Others, . In the light of the law laid down by the Apex Court in that case, the main contention which falls for consideration in this revision, in my opinion, is no longer *res Integra*. The decision in G.V. Sudhakar Rao"s case, supra, was not brought to the notice of the Court which decided Mohammed Dastagir"s case, supra. Therefore, the judgment in CrI. Rev. No. 10 of 1990 is no longer a good law. The case before the Apex Court was under various provisions of Andhra Pradesh Forest Act which are in *pari materia* to the Karnataka Forest Act, 1963. The question which came up for consideration in G.V. Sudhakar Rao"s case, supra, was whether parallel proceedings before the Magistrate and the authorized officer are bad in law and whether an order of acquittal of the accused person accused of forest offence is binding on the departmental authority exercising quasi-judicial powers conferred under Sub-section (2)(a) of Section 44 of the A.P. Act which are similar to Section 71-A of the K.F. Act. The language used in Section 44 of the A.P. Act are similar to Section 71-A of the K.F. Act. At para 12 of the judgment, the Apex Court in G.V. Sudhakar Rao"s case, supra, held as follows:

"A close, careful and combined reading of the various Sub-sections of Sections 44, 45 and 58-A of the Act as introduced or amended by Act 17 of 1976 leaves no doubt that the intendment of the legislature was to provide for two separate proceedings before two different forums and there is no conflict of jurisdiction as

Section 45, as amended by the Amendment Act, in terms curtails the power conferred on the Magistrate to direct confiscation of timber or forest produce on conviction of the accused. The conferral of power of confiscation of seized timber or forest produce and the implements etc., on the authorized officer under Sub-section (2-A) of Section 44 of the Act on his being satisfied that a forest offence has been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under Sub-section (2-A) of Section 44 of the Act, where a Forest Officer makes report of seizure of any timber before the authorized officer along with a report u/s 44(2), the authorized officer can direct confiscation to Government of such timber or forest produce and the implements, etc., if he is satisfied that a forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence u/s 20 or 29 of the Act".

Their Lordships have also referred to the judgment of the Division Bench of Andhra Pradesh High Court in Mohd. Yaseen v. Forest Range-Officer, Flying Squad, Rayachoti (1980)1 A.L.T. 8, approving the earlier opinion expressed by His Lordship Jeevan Reddy, J. (as he then was) in the case of State of Andhra Pradesh v. P.K. Mohammad(1978)1 A.P.L.J. 391 cited therein.

14. Section 71-A of the Act empowers the authorized officer in certain cases. It reads as follows:

"71-A. Confiscation by Forest Officers in certain cases.-- Notwithstanding anything contained in the foregoing provisions of this chapter, or in any other law where a forest offence is believed to have been committed in respect of timber, ivory, firewood and charcoal which is the property of the State Government or in respect of sandalwood, the officer seizing the property under subsection (1) of Section 62 shall, without any unreasonable delay produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorized by the State Government in this behalf by notification in the Official Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the "authorized officer")".

Clause (2) of Section 71-A further provides that where an authorized officer seizes under the Sub-section (1) of Section 62 any timber, ivory, firewood and charcoal which is the property of the State Government or any sandalwood or where any such property is produced before an authorized officer under Sub-section (1) once he is satisfied that a forest offence has been committed in respect of such property such authorized 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, ropes, chains, boats, vehicles and cattle used in committing such offence. Therefore, judgment of the Apex Court in G. V. Sudhakar Rao's case, supra, is applicable in all force to the case on hand and there is no ambiguity insofar as this question of law

decided by the Apex Court. Hence, the observation made in Mohammed Dastagir's case, supra, in Cri. Rev. No. 10 of 1990 in my opinion is difficult to follow. It is not the case of the learned Counsel for the petitioner that the authorized officer has not followed the procedure as envisaged in the Act for passing the order of confiscation. No such infirmity is noticed. It is contended that, it is a compoundable offence and there Section 71-A of the Act is not applicable. It is true that the offence is compoundable, but no attempt is made to compound the offence by the petitioner. Therefore, the settled question in my opinion-needs no reconsideration in the High Court. The owner has contended that the vehicle was taken away by the thieves and they were transporting the forest produce for which the owner cannot be held liable which in my opinion has no merit. The petitioner who has taken such defence has failed to produce an iota of evidence before the authorized officer and it is not open for him to now contend that he is not liable. The petitioner has not led in any evidence to show that he was in no way involved in the offence and that he was not aware of any such offence to his knowledge or by his agents or servants and that he has taken enough care to see that no such offence is committed by persons who are in charge of the vehicle. The theft theory propounded before the authorized officer is a make-belief story which is not proved at all and the Courts have rightly rejected such defence. Therefore, the petitioner clearly had no explanation or defence to offer before the Courts below and the contentions now canvassed for my consideration, in my opinion, have no merit. I find no merit in this revision. Revision is accordingly dismissed.