
(1998) 07 AP CK 0049

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8972 of 1988

Forest Range Officer, Gandhari, Nizamabad Dist.

APPELLANT

Vs

K. Raju and others

RESPONDENT

Date of Decision : 17-07-1998

Acts Referred:

Andhra Pradesh Forest Act, 1967 — Section 44(2)

Citation : (1998) 4 ALD 624 : (1998) 4 ALT 445

Hon'ble Judges : P. Venkatarama Reddi, J;A. Hanumanthu, J

Bench : Division Bench

Advocate : Government of Pleader for Forest, for the Appellant; Mr. Rajeev Indani and Mr. I. Vishnu Rao, for the Respondent

Judgement

P. Venkatarama Reddi, J.—Aggrieved by the order passed by the Divisional forest Officer, Kamareddi confiscating the lorry belonging to the first respondent u/s 44 (2-A) of A.P. Forest Act, the first respondent preferred an appeal to the District and Sessions Judge, Nizamabad. The Divisional Forest Officer, Kamareddi held that the owner of the lorry had prior knowledge of transport of timber for the benefit of A.4 and despite the same, he did not take necessary precautions to ensure that illicit timber was not transported by the driver. He further held that the owner and driver connived with A.4 to facilitate the transport of illicit timber. Hence, he ordered confiscation of the lorry. Admittedly, the lorry was seized on 13-1-1987 when it was carrying on 104 timber logs which were obtained by felling trees in the reserve forest area, On the short ground that an opportunity of compounding the offence was given to the appellant-owner, the District Sessions Judge, Nizamabad before whom criminal appeal was filed allowed the appeal partly. The appellant was directed to pay the amount equivalent to the value of the forest produce i.e. Rs. 12,810/- as a condition for the release of the vehicle. It is against this order, the present writ petition is filed by the Forest Range Officer, Gandhari, Nizamabad district.

2. It is seen from the impugned order that there is no discussion of the material

aspects at all. Whether the appellant (owner of the lorry) also had the knowledge of the use of the vehicle for carrying illicit timber and whether he had taken reasonable precautions to see that the vehicle was not used for the said purpose, have not been discussed. If the owner had knowledge or is deemed to have had knowledge and he failed to take reasonable precautions, the owner cannot disown his responsibility and it will have a definite bearing on the question whether confiscation is warranted and if not to what extent the confiscation has to be made. If on the other hand, the owner had no knowledge and he had taken reasonable precautions, the vehicle may still be liable for confiscation if the driver or the person-in-charge had knowledge or connived in the offence. But in the latter case, the punishment to be meted out to the owner of the vehicle by way of confiscation need not be of the same magnitude. It was held in a recent Full Bench decision rendered by two of us and K.S. Srivastav, J., that the authorised officer in exercise of power of confiscation u/s 44(2-A) can confiscate whole of the vehicle or depending upon the circumstances. He may confiscate part of the value of the vehicle and the same principle will apply in appeal without any discussion and without consideration of relevant facts and circumstances, the learned Judge directed to pay an amount equivalent to value of the forest produce. That order was purportedly passed u/s 59 of the Act. The Full Bench held that the power of compounding cannot be exercised by the appellate Court or even by the Forest Officer, but in fixing the quantum of value to be confiscated, the Court can have regard to the scale of compounding fee as a measure and that while it is within the province of the Forest Officer and the appellate Court to direct confiscation of the entire vehicle, still the said officer or the Court has to judiciously exercise its discretion so as to fix a reasonable amount liable for confiscation, in case the confiscation of the entire vehicle is found to be unwarranted. As already noted, the appellate Court without discussion of relevant facts and circumstances having a material bearing on the determination of the amount to be confiscated, arbitrarily fixed a sum of Rs.12,810/-.

3. We, therefore, set aside the impugned order and direct the District Judge, Nizamabad to dispose of the appeal afresh in the light of the observations made above. The appeal shall be numbered as a Civil Miscellaneous Appeal as held by this Court in *Nehrulal Makadia v. State of A.P.* 1987 (2) APLJ 59 and the District Judge has to hear the appeal. The writ petition is allowed subject to the above directions. No costs.