

(2011) 03 KAR CK 0094

In the Karnataka High Court

Case No : W.A. No"s. 4007 of 2010 and 1007 of 2011

Francis Monthero and Mohammed Ariz

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 28-03-2011

Acts Referred:

Karnataka Forest Act, 1963 — Section 63, 71 D, 71 G

Citation : (2011) 03 KAR CK 0094

Hon'ble Judges : V.G. Sabhahit, J;B. Manohar, J

Bench : Division Bench

Advocate : K. Ravi Shankar, for the Appellant; K. Krishna, AGA for R1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

B. Manohar, J.—The Appellants are the Petitioners in W.P. No. 22219-20/2010. Being aggrieved by the order dated 24-8-2010 passed by the learned Single Judge wherein the learned Single Judge dismissed the writ petitions upholding the order passed by the Authorities below, the Appellants have preferred these writ appeals.

2. The brief facts of the case are as follows:

On receiving the telephonic message that the government timber being illegally transported to the Ambika Saw Mill, Udupi, the Assistant Conservator of Forests, the Technical Assistant to-Deputy Conservator of Forests, Kundapur and the Range Forest Officer, Udupi visited the Ambika Saw Mill, Udupi on 22-11-2003 and found fresh Nandi logs unloaded in the Saw Mill yard. When examined the said Nandi logs, there was no clear and visible government hammer marks affixed on any of the logs regarding granting of transport permit. The owner of the Saw Mill was asked to produce the relevant documents. The Saw Mill owner produced a Transit Permit No. 145311 dated 19-11-2003 issued by the Koppa Section Forester of Koppa Forest Division. In the permit, it was mentioned that

logs were originated and brought from Sy. No. 85/6, 7, 9, 10, 11 and 12 of Bintravally village. The permit was granted for transportation of silver oak billets, but, what is transported is 26 Nandi logs measuring 9.849 M3 and the said Nandi logs had been transported under the fake permit, in a lorry bearing Registration No. KA-18/4748 which belongs to the first Appellant. The first Appellant sold the lorry, which was involved in the forest offence to the second Appellant on 12-2-2004. The Competent Authority seized the lorry. An application was made by the registered owner of the said lorry for interim custody of the vehicle u/s 63 read with Section 71-G of the Karnataka Forest Act, 1963. The Authorised Officer rejected the said application.

3. The Authorised Officer after conducting necessary enquiry and after hearing the Appellants as well as the contesting Respondents, invoking Section 71-A of the Karnataka Forest Act confiscated the lorry bearing Registration No. KA-18/4748 together with 24 Nandi logs seized on 22-11-2003 by its order dated 28-12-2004/6-1-2005. Being aggrieved by the order dated 28-12-2004 passed by the Authorised officer, the second Appellant filed W.P. No. 16124/2005 before this Court. this Court by its order dated 13-12-2005 dismissed the writ petition on the ground that the Petitioner has got alternative remedy of an appeal under the Forest Act. It was further held that as on the date of the forest offence, the second Appellant was not the owner of the said vehicle and the original owner has not taken any appeal or has not challenged the order of the Authorised Officer. After dismissal of the said writ petition, the Appellants 1 and 2 filed another writ petition in W.P. No. 1697/2006 challenging the order dated 28-12-2004 on the very same grounds. this Court dismissed the writ petition on 3-11-2007 on the ground that the Petitioners have got alternative remedy of an appeal u/s 71-D of the Karnataka Forest Act. After dismissal of the writ petition, the Appellants have preferred CrI.A. No. 111/2008 before the Fast Track Court, Udupi. The Fast Track Court after considering the matter in detail dismissed the said appeal. Being aggrieved by the same, the Appellants have preferred W.P. Nos. 22219-20/2010 before this Court. this Court, by its order impugned in the above writ appeal rejected the said writ petitions on the ground that the said lorry was involved in the forest offence transporting 26 Nandi logs on a fake permit. The procedure has been followed before passing the order and also held that there is no infirmity in the order passed by the Original Authority as well as the Appellate Authority. Being aggrieved by the order dated 24-8-2010 the Appellants have preferred these appeals.

4. Sri. K. Ravishankar, learned Counsel appearing for the Appellants contended that the order passed by the learned Single Judge as well as the Competent Authority and the Appellate Authority are contrary to law. Without following the procedure prescribed u/s 71-A and 71-B of the Karnataka Forest Act, the order impugned has been passed. Though the Respondents have failed to prove that there is any connivance of the owner of the lorry in transporting the said Nandi logs, the Fast Track Court has failed to appreciate the implication of Section 71-B of the Act. He further contended that the first Appellant is the registered owner

of the lorry as on the date of commission of offence, no notice was issued to him before confiscating the vehicle. The Authorised Officer committed an error in confiscating the vehicle without there being any show cause notice to the registered owner. The confiscation of the vehicle is opposed to the principle of natural justice and the same is liable to be set aside.

5. On the other hand, Sri. K. Krishna, learned Additional Government Advocate argued in support of the order passed by the learned Single Judge and the Authorities below. He has contended that before passing the confiscation order, notice has been issued to the Appellants and they had appeared before the Authorised Officer and the first Appellant has given evidence as D.W. 1 and he was also cross-examined by the defense Advocate. Hence, it is not open to the Appellants to contend that no show cause notice has been issued to the first Appellant and sought for dismissal of writ appeal.

6. We have carefully gone through the impugned order passed by the learned Single Judge, the Appellate Authority as well as the Original Authority and also considered the arguments addressed by the learned Counsel for the parties.

7. It is not in dispute that 26 Nandi logs have been transported in a lorry bearing KA-18/4748 belonged to the first Appellant to the Ambika Saw Mill, Udupi on a transport permit dated 19-3-2003. In the transport permit it was clearly mentioned that the silver oak logs being transported from Bintravally village. However, they have transported the Nandi logs from the forest lands in Sy. No. 153/1, 152 and 150 of Hesgodu village. The Deputy Conservator of Forests on credible information inspected the Ambika Saw Mill on 22-11-2003 and found 24 Nandi logs in the Yard. The said Nandi logs do not contain any seal or number. In view of that, the lorry in which the said Nandi logs were transported has been seized and proceedings were initiated for illegally transporting the Nandi logs on a fake permit and confiscation order has been passed on 28-12-2004 by the Authorised Officer. The two writ petitions filed by the Appellants have been dismissed. The appeal filed before the Fact Track Court in CrI.A. 111/2008 was also dismissed confirming the order passed by the Authorized Officer confiscating the lorry and 24 Nandi logs. The learned Single Judge considered the matter in detail and dismissed the writ petitions.

8. The only point urged by the Appellants before this Court is that before passing the confiscation order, no notice has been issued to the registered owner as on the date of incident, in violation of the principle of natural justice.

9. As could be seen from the order passed by the Authorized Officer, who has confiscated the lorry and 24 Nandi logs, an opportunity has been given to the original owner as well as the subsequent purchaser of the lorry before passing the order. The Appellant No. 1 was examined as D.W.1 and Appellant No. 2 has been examined as D.W.2 and they have been cross-examined by the defense advocate. Hence, it is not open to the Appellants to contend that without following the procedure prescribed u/s 71-A and 71-B of the Forest Act and

without following principle of natural justice, the confiscation order has been passed. In order to avoid the confiscation of the lorry, the first Appellant sold the lorry, which was involved in the forest offence in favour of the second Appellant on 12-2-2004. The evidence of the parties clearly disclose that the second Appellant is also aware of the fact that the said lorry is involved in the offence, in spite of the same, he has purchased the said lorry. Hence it is not open to the Appellants to contend that show cause notice has not been issued to them and provisions of section 71-A and 71-B has not been complied with. Both the Authorised Officer as well as the Appellate Authority have come to the conclusion that the forest products were being transported without any valid permit. That being a question of fact, the same cannot be interfered by this Court.

10. We find that there is no error or irregularity in the order passed by the learned Single Judge as well the Appellate Authority and the Original Authority. After considering the entire materials on record the order impugned in the writ appeal has been passed. The Appellants have not made any case to interfere with the well-considered order passed by the learned Single Judge in an intra court appeal. Accordingly, the appeals are dismissed.