

(2022) 04 CHH CK 0006

In the Chhattisgarh High Court

Case No : Writ Petition (Criminal) No. 755 Of 2019

Gend Lal Kushwaha

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 01-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Wild Life (Protection) Act, 1972 — Section 27, 29, 31, 50, 52
Indian Forest Act, 1927 — Section 26(1)(e)(f), 52, 52(e)

Citation : (2022) 04 CHH CK 0006

Hon'ble Judges : Rajani Dubey, J

Bench : Single Bench

Advocate : Sumit Shrivastava, Ravi Maheshwari

Final Decision : Dismissed

Judgement

1. This petition under Article 226 of the Constitution of India has been preferred by the petitioner against the order dated 13.05.2019 (Annexure-P/1) passed by the learned 3rd Additional Sessions Judge, Ambikapur, District Sarguja in Criminal Revision No.02/2014, whereby the criminal revision of the petitioner has been dismissed.

2. Brief facts of the case are that on 08.10.2010 at about 6 pm, one tractor bearing Registration No.CPL- 9287 Chasis No.P-12855 and trolley bearing Registration No.9034 was found carrying illegal 52 number of timber woods in Tamor Pingla Sanctuary Area, Sarguja Forest Circle, Ambikapur. The said vehicle was driven by driver Shyamlal and the owner of the vehicle namely Ramchandra Kushwaha was also present. After interrogation by the Forest Officer, an offence punishable under Sections 27, 29, 31, 50 & 52 of the Wild Life (Protection) Act, 1972 and Section 26 (1) (e) (f) of the Indian Forest Act, 1927 was registered against the driver and owner of the said vehicle bearing Forest Offence No.16091/2006 and thereafter the said vehicle including timbers was seized. Thereafter, charge sheet was filed before the learned Chief Judicial Magistrate

First Class, Ambikapur. On 17.08.2012, after giving show cause notice to the petitioner regarding confiscation of the vehicle and finding the reply of the petitioner unsatisfactory, an order (Annexure-P/2) was passed by the respondent No.3, whereby the aforesaid vehicle was confiscated. Against the said order of confiscation, the petitioner filed appeal before the respondent No.2, which was dismissed vide order dated 03.10.2013 (Annexure-P/3), against which the petitioner filed criminal revision before the learned 3rd Additional Sessions Judge, Ambikapur, District Sarguja in Criminal Revision No.02/2014, which too has been dismissed vide order dated 13.05.2019 (Annexure-P/1). Hence, this present petition has been filed.

3. Learned counsel for the petitioner submits that the accused persons have been acquitted by the Criminal Court, thus no offence has been proved against the petitioner and therefore the proceeding of confiscation of the vehicle is illegal and arbitrary. He further submits that when the ingredients of the offence are not proved and the accused is acquitted of the charges, then the seized property is to be handed over to its owner, but the said aspect of the matter has not been considered while deciding the revision of the petitioner. Thus, the impugned order may kindly be quashed and the vehicle be handed over to its owner.

4. Learned State counsel supports the impugned order.

5. Heard learned counsel for the parties and perused the material available on record.

6. The petitioner has filed copy of judgment dated 24.11.2018 (Annexure-P/4) passed by the learned JMFC, Ambikapur, District Sarguja in Criminal Case No.3167/2010, whereby the learned Trial Court has acquitted the accused persons of the charges under Sections 27, 29, 31, 50 & 52 of the Wild Life (Protection) Act, 1972 and Section 26 (1) (e) (f) of the Indian Forest Act, 1927.

7. Section 52 of the Indian Forest Act, 1927 provides as under:-

"52. 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, carts or cattle used in committing any such offence, may be seized by any Forest-officer or Police-officer.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been so seized, and shall, as soon as may be, make a - report of such seizure to the Magistrate having jurisdiction to try the offence on account which the seizure has been made:

Provided that, when the forest-produce with respect to which such offence is believe 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."

A bare reading of the above provision makes it clear that Forest Officer has

power to confiscate the vehicle and the Competent Authority after giving show cause notice to the petitioner passed the order dated 17.08.2012 (Annexure-P/2), whereby the vehicle including timber woods has been confiscated.

8. In the appeal preferred by the petitioner challenging the order (Annexure-P/2), notice was issued to the accused persons on 10 times i.e. from 04.02.2013 to 02.09.2013, but the accused persons did not appear before the respondent No.2 nor did they file any legal document regarding transportation of woods. The learned Appellate Court after appreciating the oral and documentary evidence available on record dismissed the appeal of the accused Ramchandra and upheld the order of the respondent No.3, against which the criminal revision was filed before the learned 3rd Additional Sessions Judge, Ambikapur, District Sarguja, which too has been dismissed vide order dated 13.05.2019 (Annexure-P/1). The stand taken by the petitioner therein that since the accused persons have been acquitted of the aforesaid charges, therefore, the vehicle confiscated be released and handed over to its owner. The learned ASJ has clearly held that criminal trial and confiscation proceedings may run simultaneously and once the information of confiscation proceeding under Section 52 (e) of the Indian Forest Act is given to the District Magistrate, then the Trial Magistrate has no power regarding confiscated vehicle of being released, disposed etc. and it has been further held that the information of confiscation proceeding was already given to the Chief Judicial Magistrate, Ambikapur and the accused were given ample opportunity of being heard and only thereafter the orders were passed and thereby dismissed the criminal revision of the petitioner.

9. In view of the foregoing discussion, this Court is of the opinion that the finding of the learned ASJ that the criminal trial and confiscation proceeding are different proceedings and they may run simultaneously and even after acquittal of the accused persons, the vehicle was found to be involved in transportation of illegal timbers and the same was liable to be confiscated and the accused were given ample opportunity of being heard, is based on proper appreciation of provisions of law and facts as well, which cannot be interfered with by this Court.

10. The petition being devoid of any merit deserves to be and is hereby dismissed accordingly. No order as to cost (s).