

(1998) 05 OHC CK 0017
In the Orissa High Court
Case No : O.J.C. No. 110 of 1997

Gurparlad Singh

APPELLANT

Vs

Divisional Forest Officer, Sambalpur and Others

RESPONDENT

Date of Decision : 13-05-1998

Acts Referred:

Orissa Forest Act, 1972 — Section 56

Citation : AIR 1998 Ori 177

Hon'ble Judges : R.K. Patra, J; Pradipta Ray, J

Bench : Division Bench

Advocate : B.P. Ray and P.C. Rout, for the Appellant; R.P. Mohapatra, A.S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Patra, J.—The Authorised Officer-cum-Assistant Conservator of Forests, Rairakhol Division by order dated 11-3-1994 (Annexure 1) directed confiscation of truck bearing registration No. MP-23-B-5595 belonging to the petitioner. Against the said order of confiscation made u/s 56 of the Orissa Forest Act, 1972, the petitioner preferred appeal before the learned District Judge, Sambalpur who after hearing dismissed the same by order dated 27-6-1996 (Annexure 2). The validity of the aforesaid two orders are under challenge in this application filed under Articles 226 and 227 of the Constitution of India.

2. Facts On 24-2-1993 at about 4.00 p.m. the Range Officer, Girishchandrapur getting information from the Range Officer, Uppermunda that a truck bearing registration number MWY 4731 with kendu-leaf bundles had been lying near Tikira rivulet near Gayapathar, rushed to the spot with members of his staff and found that the truck was stuck up in the loose sand of the river bed. There was no occupant in the truck. He seized the vehicle along with 833 bundles (weighing 33.33 quintals) of processed kendu leaves. He also found four fake registration number plates inside the truck with description bearing (i) ORA 0487, (ii) MP23-B-5595, (iii) WGB 4725 and (iv) WBI 3526 and seized them. On further

examination, he noticed that the seized truck had Chasis No. 34405.21-30396 of Tata Make, Jamshedpur India Type 692102-Engine No. 146909. The truck was extricated from the river bed and brought to Baktideul. The Divisional Forest Officer, Rairakhol was intimated about the seizure of the truck with the kendu leaves and other articles. On 6-3-1993 the petitioner appeared before the Range Officer and claimed that the seized truck belonged to him and produced the R. C. Book of the truck bearing number "MP-23-B-5595", He expressed his ignorance of the incident. After verifying the engine and chasis number noted in the truck with reference to the R. C. Book, the Range Officer held that the real registration number of the truck is M.P.-23-B-5595 and not MWY 4731 which was the number plate attached to the vehicle at the time of detection. The Range Officer after completing the enquiry submitted prosecution report against the driver of the truck u/s 3 of the Orissa Kendu Leaves (Control and Trade) Act, 1961 and simultaneously submitted a report to the Authorised Officer for initiating confiscation proceeding against the petitioner u/s 56 of the Orissa Forest Act, 1972 (hereinafter referred to as "the Act"). On the basis of the said report, the Authorised Officer-cum-Assistant Conservator of Forests initiated the confiscation proceeding and issued notice to the petitioner who appeared before him and pleaded that he had no knowledge about illicit transportation of kendu leaves in his truck. According to him, the driver Satrugna Dehury had been to Angul with the truck with his permission to utilise the same on hire during return journey. The driver later came and reported to him that the truck was stuck up in the loose sand of the river-bed and when he deputed the driver to extricate it, it was found that the same had been seized by the forest officials. In course of the proceedings, six witnesses were examined including the concerned Range Officer on behalf of the department. The petitioner examined one witness, namely, Harihar Pradhan who stated that on a request made by a man from Uppermunda to arrange a truck to carry a marriage party, he arranged the offending truck for the said person.

3. On the basis of the evidence, the Authorised Officer directed confiscation of the truck with the seized kendu leaves as per the impugned order (vide Annexure I) by recording the following findings :

(i) There is every reason to believe that transport of kendu leaves in the truck in question was from Sambalpur to outside the district or outside the State. It was thus, a clear case of commission of forest offence (vide para 14 of the impugned order).

(ii) The driver had knowledge that transport of kendu leaves was unauthorised as it was not supported by any permit (vide para 14 of the impugned order); and

(iii) The lower of the vehicle is vicariously liable for the wrong committed by his employee.

The petitioner appealed against the above mentioned order of confiscation before the learned District Judge, Sambalpur who dismissed the same (vide Annexure

2).

4. Shri B. P. Ray, learned counsel for the petitioner submitted that "kendu leaf" is a minor forest produce and for its transport inside the district, no transit permit is necessary and in absence of any evidence that kendu leaves were being transported beyond the district of Sambalpur, the confiscation proceedings is misconceived. In this connection, he placed reliance on the judgment dated 17-8-1990 of this Court in O.J.C. No. 1834 of 1984 (Divisional Forest Officer. Athmallick v. M/s. Link Transport). In that case, this Court found that there was no clinching material that kendu leaves were being transported to one district to another district. In absence of satisfactory evidence in that regard, the Court held that there was no violation of Rule 4 of the Orissa Timber and other Forest Produce Transit Rules, 1980 (hereinafter referred to as "the Transit Permit Rules") and consequently, no forest offence was committed. The confiscation proceeding was accordingly held to be unsustainable. According to the learned counsel for the petitioner, none of the witnesses examined on behalf of the prosecution stated that kendu leaves were being transported by seized truck out of the district of Sambalpur.

5. Sub-section (2-a) of Section 56 of the Act provides that where an authorised officer seizes any forest produce under sub-section (1) or where any such forest produce is produced before him under sub-section (2) and he is satisfied that a forest offence has been committed in respect thereof, he may order confiscation of the forest produce so seized or produced together with all tools, ropes, chains, beats, vehicles or cattle used in committing such offence. "Forest offence" has been defined in Section 2(e) to mean an offence punishable under the Act or under the Rules. Section 2(g) defines forest produce to include inter alia, kendu leaves whether found in, or brought from a forest or not. The Transit Permit Rules have been framed under Sections 45 and 46 of the Act. Rule 2(1)(a) thereof defines "minor forest produce" to mean "forest produce" other than timber, fire wood, charcoal and bamboos. From the aforesaid definition, it is clear that kendu leaf is a minor forest produce. Rule 4 of the Transit Permit Rules states that except as provided in Rule 5, all forest produce in transit shall be covered by a permit called "Transit Permit" to be issued by the Divisional Forest Officer or by Assistant Conservator of Forests authorised by him in that behalf. Rule 5(1)(i) provides that no transit permit is required to cover transit of forest produce for transport of minor forest produce within the district except lac, tassar, etc. (kendu leaves not included). Rule 21 provides that whoever contravenes any of the provisions of the rules shall be punished with imprisonment stated therein. From the conjoint reading of all the aforesaid provisions it follows that so far as kendu leaves are concerned no transit permit is necessary for their transport within the district. In other words, transport of kendu leaves beyond the district has to be backed by a Transit Permit and forest offence is committed in absence of Transit Permit.

6. The limited question that arises for consideration is whether in the case at

hand, the prosecution has been able to prove that there was commission of forest offence so as to attract the confiscation proceeding u/s 56 of the Act. The Authorised Officer has recorded a clear finding that there is every reason to believe that transport of kendu leaves in the truck in question was from Sambalpur to outside the district or outside the State. It is a pure finding of fact based on appreciation of evidence. Shri Ray seriously contended that the aforesaid finding is based on no evidence and is thus, perverse. In view of his submission, we have perused the evidence of the witnesses examined on behalf of the prosecution.

P.W. 1 was the Range Officer, Girish-chandrapur range. He deposed that after getting information about the truck lying stuck-up in the river-bed, he rushed to the spot and found that the truck in question was standing loaded with kendu leaves and because of heavy load it was stuck-up in the loose sand. He seized the truck and the kendu leaves which were inside the truck. On further search, he found a number of forged number plates inside the truck. P.W. 2, the Forester of Girishchandrapur range and P.W. 3, the Forester of Uppermunda, corroborated the evidence of P.W. 1. P.W. 6 is the main witness who submitted the report after making necessary enquiry. He stated that on production of the R. C. Book by the petitioner and on examining the chasis number and engine number of the seized truck with reference to the R. C. Book, he found that the concealed registration number of the seized truck is MP 23/ B-5595 and the number plate which was attached to the truck, i.e., MWY 4731 at the time of detection was a forged one. He deposed that on further enquiry he found that the driver had purchased the dried kendu leaves from the local people of Atheallick (K.L.) Division to transport the same to Calcutta via Gayapathar and Uppermunda. Nothing was brought out in his cross-examination to discredit his testimony as aforesaid. The petitioner did not adduce any evidence to the contrary. It was open to him to show that the kendu leaves were being carried inside the district of Sambalpur. As the kendu leaves were not backed by any transit permit, it was for the petitioner to establish the place of purchase of the kendu leaves and the place whereto they were destined to be sent. The petitioner has failed to adduce any evidence in this regard. For the aforesaid reasons, we have no hesitation to hold that the kendu leaves were being transported in the vehicle beyond the district of Sambalpur. It is, therefore, not a case of no evidence, as contended by Shri Ray. Admittedly, there was no transit permit for transport of the seized kendu leaves. The transport beyond the district of Sambalpur could not be materialised because the vehicle stuck into the loose sand of the river-bed. The fact that fake registration number plates were recovered from the truck probabilises that the vehicle was being engaged for illegal and unlawful activities.

7. The petitioner does not dispute that the driver Satrughna Dahury was incharge of the vehicle at the relevant time. The petitioner has not been able to establish as required in Sub-section (2)(e) of Section 56 of the Act that he is the owner of the vehicle had taken all reasonable and necessary precautions against use of the vehicle for commission of the forest offence.

8. For the reasons aforesaid, the impugned order of confiscation passed by the Authorised Officer (confirmed in appeal) cannot be faulted with.

9. There is no merit in this application which is accordingly dismissed. There would be no order as to costs.

Pradipta Ray, J.

10. I agree.