

(2014) 10 UK CK 0011

In the Uttarakhand High Court

Case No : Writ Petition Criminal No. 937 of 2014

Harendra Singh Mehra

APPELLANT

Vs

State of Uttarakhand and Others

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Constitution of India, 1950 — Article 226 — Forest Act, 1927 - Section 26, 41, 42, 52

Citation : (2015) 1 NCC 523

Hon'ble Judges : Umesh Chandra Dhyani, J.

Bench : Single Bench

Advocate : R.S. Sammal and B.S. Bhandari, for the Appellant; H.S. Rawal, A.G.A. and K.S. Rawal, Brief Holder, for the Respondent

Final Decision : Disposed off

Judgement

Umesh Chandra Dhyani, J.?The applicant, by means of present criminal writ petition moved under Article 226 of the Constitution of India, seeks to issue a writ, order or direction in the nature of certiorari quashing the impugned orders dated 17.05.2014 and 02.07.2014, passed by respondent No. 2 and respondent No. 3 respectively. As per challani report, one dumper bearing registration No. UK-04C/2572 was found carrying illegal mines and minerals from the river bed on 30.03.2014, by a team comprising of forest officials, police officials and revenue officials. Accordingly, the dumper was seized. The same was confiscated by the Divisional Forest Officer, West Tarai Forest Division, Ramnagar under Section 52A of the Indian Forest Act (Uttarakhand amendment), vide order dated 17.05.2014. An appeal was preferred before the Conservator of Forests, Haldwani against the same. The Appellate Authority/Conservator of Forests, Western Circle, Uttarakhand, Haldwani dismissed the appeal No. 22 of 2014-15. Aggrieved against the same, present criminal writ petition has been filed on behalf of the writ petitioner.

2. It is undisputed fact that the writ petitioner is the owner in possession of the dumper in question. Whereas the incident allegedly took place on 30.03.2014, it

is the statement of learned counsel for the writ petitioner that no criminal complaint has been instituted against the writ petitioner by the forest authorities so far. Yet, learned counsel for the writ petitioner undertakes that the writ petitioner shall produce the vehicle as and when required by the forest authorities or the Court, if the same is released in his favour. It is highly unlikely that the forest officials will not file a criminal complaint case against the writ petitioner in connection with the offence, which allegedly took place on 30.03.2014, in respect of offences punishable under Sections 26, 41, 42, 52 of the Indian Forest Act.

3. Hon"ble Apex Court has dealt with such issue of disposal of property, time and again, holding that no useful purpose will be served by keeping the case property in the custody of the police (in the instant case the forest department). In *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, , Hon"ble Supreme Court has observed that "it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles." This Court is, therefore, of the view that dumper should be given in the supurdagi (custody) of it's owner, subject to certain conditions.

4. Criminal writ petition is, therefore, allowed. Dumper is directed to be given in the supurdagi of it's owner, subject to following conditions:

(i) The owner shall execute personal bond of rupees twelve lakh to the effect that he will produce the same before the Investigating Officer or the court concerned, if and when required to do so, failing which, he will be required to pay such sum in favour of the State Government.

(ii) The owner shall neither sell, mortgage or otherwise transfer the dumper to any other person, nor change/alter it's shape during the pendency of the criminal case against him.

(iii) The dumper shall not be used in any unlawful activity like illegal mining etc. If the dumper is found to be used for any unlawful purpose, this order of supurdagi shall stand withdrawn without reference to this Court. In that case, the forest department shall have the authority to seize the same once again.

With the directions as above, the criminal writ petition stands disposed of.