

(2003) 07 JH CK 0064
In the Jharkhand High Court
Case No : CWJC No. 3961 of 1999 (R)

Hemlal Mahto

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 4 JCR 309

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : B.V. Kumar, for the Appellant; Atanu Bannerjee, JC to GA, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—Heard Mr. B.V. Kumar, learned counsel for the petitioner and Mr. Atanu Banerjee, learned counsel appearing for the State respondents.

2. The Amendment Application filed by the petitioner on 28.7.2000 praying inter alia for quashing the order dated 24.3.2000 passed in Revision Petition No. (C) 11/97 by the respondent No. 2 during the pendency of this Writ Application is allowed. It will form part of the records of this case.

3. The petitioner had initially challenged the interim order dated 6.1.1998 (Annexure 5) passed by the Revisional Authority whereby and whereunder the operation of the order dated 20.11.1996 of the appellate authority was ordered to be kept in abeyance till disposal of the Revision Application. That prayer has now become infructuous in view of the subsequent prayer made by the petitioner in the aforementioned Amendment Application wherein he has challenged the order passed by the Revisional Authority. The petitioner has also made a prayer for a writ of mandamus commanding upon the respondents to release the Jeep bearing Registration No. BHM 551 which was seized and confiscated by the respondent No. 4 in Confiscation Case No. 30/95.

4. The facts of this case are that the petitioner claimed himself to be the owner of the aforementioned Jeep. On 16.7.1995, the said vehicle was seized and upon perusal of the offence report, it was reported that 231 pieces of sawn "Salai" Timber was being transported. The prosecution report inter alia reveals the following allegations :-"upon receipt of an information that "Simal" log had been illegally felled, the Range Officer went to Nawadih village for purposes of making inquiries. During the course of inquiry, he came to learn that whenever it was learnt that the Range Officer and Forest Guard were out on Government duty, then a Jeep would appear and would carry the illegally felled timber and would take it towards Barhi where the logs would be sawn and sold. It was further disclosed that the said Jeep bore registration No. BHM 551 and it was actively involved in the aforesaid business. On the date of occurrence, the Range Officer received a secret information that the said Jeep having loaded itself with illegally felled timber, would be proceeding towards Hazaribagh. Having received the said confidential information, a raiding party was formed and the Jeep was sighted but on seeing the raiding party, it attempted to escape. The raiding party chased the Jeep and apprehended the same in front of the Salparni gate. The officers demanded permit for the sawn timber but no such permit was produced and ultimately, two accused persons were taken into custody while accused numbers 2 and 4 (i.e. Karu Rana and Sudhir Kumar Rana) managed to escape. A seizure list was prepared and upon perusal of the seizure list, it appears that the 231 piece of sawn "Salai" Timber was seized as is apparent from Column No. 4 of the offence report.

5. Thereafter, a confiscation proceeding being, Confiscation No. 30/95 was initiated in which the petitioner appeared and filed cause inter alia submitting that the wood, had in fact been purchased by valid a receipt from one New Rana Saw Mill and the quantity of Timber was 239 and not 231 and also, that the nature of the timber was "Salai" and not "Semal". Thereafter, an inquiry was conducted by the assistant Conservator of Forest who submitted his report on 16.9.1995 and in the report he mentioned that he had made inquiry and had gone to the New Rana Saw Mill and had found that on 16.7.1995, 239 pieces of sawn "Salai" had been sold and that the said timber yard had only "Salai" and Raiyati timber for purposes of trade and sale. He also mentioned that only "Salai" had been sold. The aforesaid report is Annexure 2.

6. Upon perusal of Annexure 3 which is the order of confiscation passed by the respondent No. 4, it is apparent that actually there were 239 pieces of "Salai" while the offence report, on the other hand, shows the seizure of 231 pieces. The confiscating authority also took into consideration that in the prosecution report, it had been mentioned that the wood which had been seized was "Semal". Consequently, he passed an order directing seizure of the vehicle along with the 231 pieces of sawn "Simal" wood.

7. Being aggrieved, the petitioner preferred an appeal and the appellate authority vide order dated 20.11.1996 took into consideration the receipt granted

by New Rana Saw Mills which had disclosed that "Salai" had been sold. Consequently, the appellate authority allowed the appeal and set aside the order of confiscation passed in Confiscation Case No. 30/95. It appears that thereafter a revision was filed by the D.F.O. Hazaribagh against the said order and, by order dated 23.4.2000, he set aside the order of the appellate authority and upheld the order of confiscation.

8. In the instant case, the bone of contention is as to whether the timber that was found in the Jeep was "Salai" or "Simal". If it was Salai, then as per the order of the appellate authority which was passed on the basis of the receipt given by New Rana Saw Mill, the petitioner had a valid case but if the wood was "Simal" then no explanation being forthcoming from the side of the petitioner, he would not be entitled to any relief.

9. From the offence report, it is apparent at Column 4 that the property seized was described as 231 pieces of sawn "Salai" and not Simal. However, in the body of the offence report it is mentioned that there had been illegal felling of Simal trees one month ago and therefore, the loss caused to the forest was to the extent of Two Simal trees of 96 inch girth and one Simal Tree of 97 inch girth.

10. The Revisional Authority however has recorded that upon reading of the offence report it is indicative of the fact that the Simal wood had been seized and that the New Rana Saw Mill did not have any Simal wood in their stock. He further takes into consideration that the saw Mill owner had sold 239 pieces of Salai whereas the number seized is 231 pieces of Salai.

11. It appears therefore that the Revisional Authority has not correctly applied his mind in relation to the nature of the wood that was loaded on the Jeep. If the wood was actually Salai then as per the report of the Assistant Conservator of Forest dated 16.9.1995 (Annexure 2) the petitioner had a valid explanation to offer in as much as they had purchased 239 pieces of the timber from New Rana Saw Mill. If however, the timber was Simal than of course the matter is different and for which there is no explanation forthcoming. The matter therefore requires a fresh consideration at the hands of the Revisional Authority.

12. In that view of the matter, the order of the Revisional Authority passed on 23.4.2000 as contained at Annexure 7 to the Amendment Application is quashed and the matter is remanded to the appropriate authority of the State of Jharkhand to consider the matter afresh in accordance with law after taking into consideration the observations made herein. It is expected that the Revisional Authority shall dispose of the matter as expeditiously as possible but not beyond a period of four months from the date of receipt of a copy of this order.

This Writ Application is, accordingly, allowed. There shall however be no order as to costs.