
(2003) 12 JH CK 0040
In the Jharkhand High Court
Case No : Writ Petition (C) No. 1831 of 2003

Himat Lal Walani	Vs	APPELLANT
State of Jharkhand and Others		RESPONDENT

Date of Decision : 05-12-2003

Acts Referred:

Constitution of India, 1950 — Article 226
Forest Act, 1927 — Section 52(3)

Citation : 2004) 1 BLJR 223 : (2004) 1 JCR 180

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : M.M. Banerjee and A.K. Pandey, for the Appellant; Pradip Modi, GP-I and Sarvandra Kumar, JC to GP-I, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J.—This writ petition has been preferred by petitioner against the order of confiscation dated 29th September, 2001 passed by the Authorised Officer-cum-Divisional Forest Officer, Saranda in Confiscation Case No. 7/C/2001 issued u/s 52(3) of the Indian Forest Act and the order of rejection of appeal dated 22nd October, 2002 passed by the Deputy Commissioner-cum-Appellate Authority, Singhbhum (West), Chaibasa in Confiscation (Forest) Appeal No. 22/2001-2002 as also the order of rejection of revision application dated 5th February, 2003/ 22nd March, 2003 passed by the Secretary, Ministry of Forest and Environment in Revision Case No. (C)-37/2002.

Further prayer has been made to issue appropriate writ in the nature of mandamus, commanding upon the respondents to forthwith release the vehicle bearing Registration No. BR-16G-8281 which belongs to petitioner.

2. The case of the petitioner is that on 18th February, 2001 when the vehicle in question (a truck dumper) was coming with certain coolies, they put about half quintal of fire woods for their own use. When the vehicle was being driven by the driver, namely, Sanatan Das, the said vehicle was seized and a prosecution

report was forwarded to the Sub-Divisional Judicial Magistrate, Chaibasa. It was registered as Case No. C/3-56 of 2001, in which it was disclosed that about five quintals of fire woods have been found in the vehicle of the petitioner. The colliers and driver were arrested and it was reported to the concerned Court.

Further case of the petitioner is that another report was sent by the Forest Department on 19th August, 2001 in which his name was added as an accused though in the earlier report, his name was not appearing. The Authorized Officer-cum-Divisional Forest Officer, Saranda initiated a confiscation proceeding of wood and vehicle in exercise of its power u/s 52 of the Bihar Amendment of Indian Forest Act, vide Confiscation Case No. 7-C/2001. A notice was issued on the driver and khalasi but no notice was issued on the petitioner.

According to petitioner, in the notice against the driver and khalasi, no evidence was disclosed as against him, nor any material was disclosed that he (petitioner) had connived with the driver and khalasi and committed any offence. He having come to know that his vehicle was illegally seized, he filed a petition on 27th August, 2001 and requested the authority to release the vehicle in question. He took plea that at the time of commission of offence, he was in Gujarat and requested to release the vehicle.

It appears that the petitioner earlier moved before this Court in W.P. (C) No. 4462 of 2001 for release of vehicle which was disposed of on 18th September, 2001. The petitioner was asked to move before the authority. The Authorized Officer-cum-Divisional Forest Officer, Saranda, thereafter, passed a final order in the Confiscation Case No. 7/2001 u/s 52(3) of the Indian Forest Act, Bihar Amendment, 1990 by confiscating the vehicle in question along with forest produce. The appeal petition and revision application thereafter preferred by petitioner were also dismissed.

3. According to petitioner the order of confiscation is disproportionate in as much as the allegation is of carrying 0.5 quintals of fire wood (valued at Rs. 50/-) only whereas the confiscated vehicle in question of 1992 model, valued at Rs. 5 lakhs.

4. Counsel for the petitioner relied on the decision of the Supreme Court in the case of Assistant Forest Conservator and Others Vs. Sharad Ramchandra Kale, . In the said case, no ratio laid down by the Supreme Court. Taking into consideration the fact that the High Court set aside the order of confiscation on the ground that the authorities had failed to establish that the owner of the truck had any knowledge that his truck was likely to be used for carrying forest produce in contravention of the provision of the Forest Act, Supreme Court refused to interfere with the order of the High Court and dismissed the appeal preferred by the competent authority. The aforesaid judgment of the Supreme Court referred by the counsel for the petitioner is not applicable in the present case. That was a case of State of Maharashtra wherein the judgment was passed by the Bombay High Court. In the said case, there was no provision, such as Sub-section (5) to 52 of the Indian Forest Act, 1927, Bihar Amendment, 1990, which

reads as follows :

Section 52(5)- "No order of confiscation under Sub-section (3) of any tools, arms, boats, vehicles, ropes, chains or any other article (other than forest produce seized) shall be made if any person referred to in Clause (b) of Sub-section (4) proves to the satisfaction of authorized officer that any such tools, arms, boats, vehicles, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest offence."

As per Sub-section (5) of Section 52, as quoted above, the onus was on the petitioner to prove that the vehicle was used without his knowledge or connivance and that all reasonable and necessary precautions had been taken by him against use of the objects for commission of forest offence.

5. The authorities have taken into consideration the relevant facts and law aforesaid as applicable in the present case. They disputed the contention that the vehicle was carrying only half quintal of wood of about Rs. 50/-. From the seizer list, it was found that five quintals of sal wood was seized valued at Rs. 5,000/.

Though the petitioner stated that he had gone to Gujrat during the period but it was not shown that he had no knowledge, nor he could produce any evidence, such as railway/bus ticket to suggest that he had gone to Gujrat during that period. The petitioner not only failed to prove that the vehicle was used without his knowledge but also failed to show that he had taken necessary precautions that the vehicle shall not be used for commission of forest offence.

6. In the facts and circumstances, as there is no room to interfere with the orders in question, the writ petition is dismissed.