

(1990) 08 KAR CK 0050
In the Karnataka High Court
Case No : C.C.C. No. 291 of 1990

Iqbal

APPELLANT

Vs

K.S. Sai Baba, I.F.S. Authorised Officer and Dy. Conservator
of Forests

RESPONDENT

Date of Decision : 07-08-1990

Acts Referred:

Constitution of India, 1950 — Article 19 (1) (g), 301

Citation : (1991) CriLJ 798 : (1990) ILR (Kar) 3083 : (1990) 2 KarLJ 239

Hon'ble Judges : Shivaraj V. Patil, J;S. Mohan, J

Bench : Division Bench

Advocate : Mr. Kashinatharao Patil, for the Appellant; Mr. Chandrasekharaiah, G.A., for the Respondent

Judgement

1. The complaint that is lodged before us is the violation of the order made by our learned brother Justice Murlidher Rao rendered in Writ Petition No. 4513 of 1990 dated 4th of April, 1990. The learned Judge passed the order concerning the seizure of the vehicle bearing No. CNT 9362 made on 6-12-1989 as follows :-

"The respondent the Authorised Officer and Deputy Conservator of Forests is directed to dispose of the representation of the petitioner within 15 days from today and pass appropriate orders in accordance with law, keeping in view the rulings of this Court and Supreme Court on the subject."

2. Thereafter the Authorised Officer the Deputy Conservator of Forests made an order on 3-5-1990 to the following effect :

"Brief Facts of the Case :

Forest Mobile Squads, Bangalore and Kolar along with the staff of Hoskote Range, while waiting near Budigere cross of Hoskote-Devanahalli road, as they received reliable information regarding smuggling of sandalwood, tried to stop the truck No. CNT 9362 coming from Bangalore side at about 6-30 a.m. on 6-12-1989. The staff chased the truck and stopped it as the driver did not stop it

in his first instance. Three inmates of the truck including the driver were arrested. The truck was having a National permit. The documents available with the driver are for transporting gunny bags from Kerala to Ahmedabad, whereas on examination it was found that the lorry was loaded with Sandalwood in huge quantity of 6200 kgs covered with few gunny bags on the top. The driver informed that the Sandal was loaded at Medimallasandra of Hoskote Taluk for transportation to New Delhi. The entire Sandalwood was the illicit one without any valid permit and documents.

A case was registered under Karnataka Forest Act S. 71A the vehicle along with the Sandalwood was produced before the Authorised Officer and the Deputy Conservator of Forests, Bangalore Rural Division, Bangalore.

On 13-12-1989 Sri Iqbal S/o. Abdul Sattar had filed a petition for interim release of the vehicle during the pendency of the proceedings before this Court. After careful examination of the contents of the petition the following order is passed :

ORDER

I, K. S. Sai Baba, IFA., Authorised Officer & Deputy Conservator of Forests, Bangalore Rural Division, Bangalore, do hereby reject the request of Shri Iqbal, s/o. Abdul Sattar for interim custody of the vehicle No. CNT 9362 during the pendency of the proceedings before this Court as I opine that the alleged offence is such a serious one where 6200 Kgs. Sandalwood is involved and the interim release of the vehicle under the circumstances of the case will not be in the interest of the public and justice. The proceedings before this Court will be expedited and a final order is passed at the earliest."

3. What is now stated before us is, that this is gross contempt since the authority has not followed the ruling of the Supreme Court as well as this Court which requires the release of the vehicle without any impediment. If they do so, that will constitute contempt in view of the ruling of the Supreme Court reported in Chowringhee Sales Bureau (P) Ltd. Vs. Commissioner of Income Tax , West Bengal,

4. We asked the learned counsel to produce any authority to show that the release of the vehicle is automatic. He cites 1980 (1) Karnataka Law Journal 176 Divisional Forest Officer Vs. Kallur Rangappa,

5. We have carefully perused both the Judgments. In paragraph 7 of 1980 (1) KarLJ 176, what is stated is as under :

"S. 71 of the Act provides that nothing hereinbefore contained shall be deemed to prevent any officer empowered in this behalf by the State Government from directing at any time the immediate release of any property seized u/S. 62, which is not the property of Government and the withdrawal of any charge made in respect of such property. That being so, it was incumbent upon the respondent to immediately consider the application of the petitioner and to direct the release of the vehicle of question on such conditions as are deemed fit, or on execution

by the petitioner of a bond for the production of the vehicle in question so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure had been made. On the contrary, the respondent has not passed any order but as stated by the petitioner, he informed the petitioner orally that the application of the petitioner has been rejected. There cannot be any oral rejection of the application filed by the petitioner for release of the vehicle in question. The order refusing to release the vehicle must be in writing and must be supported by reasons."

Therefore, it does not lay down as a principle that in every case the vehicle must be released. It is a matter for consideration by the concerned Officer.

6. Like wise a Division Bench of this Court in Divisional Forest Officer Vs. Kallur Rangappa, has categorically ruled in paragraphs 6 and 9 as follows :

"6. It may be seen that the Act does not expressly empower the Authorised Officer to pass any order regarding interim custody of the seized vehicles and to have been used in the commission of forest offences.

But that does not mean that the Authorised Officer cannot, if he deems fit and if the circumstances warrant, release such vehicles for proper custody and safety thereof.

9. It can, therefore, be stated that the Authorised Officer who has jurisdiction to confiscate the vehicles used in the commission of forest offences, has also the power to pass orders for interim custody of such vehicles. Such a power is in built in S. 71A for effective adjudication of the matter. It is incidental and necessary to make the exercise of the power in S. 71A fully effective."

Therefore, we are totally unable to accept the contention of the complainant that the release is automatic, otherwise it is violative of fundamental right under Arts. 19(1)(g) and 301 of the Constitution of India. In the instant case, the Deputy Conservator of Forests on the consideration of the matter that the offence is a serious one where 6200 kgs., of sandalwood has been smuggled with the vehicle in question, had chosen not to release the vehicle. Thus, we hold that there is no contempt.

7. The contempt application is dismissed.

8. Application dismissed.