
(1988) 06 MP CK 0013
In the Madhya Pradesh High Court

Kirodimal Agrawal

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 24-06-1988

Acts Referred:

Constitution of India, 1950 — Article 215

Citation : (1989) CriLJ 1344 : (1991) ILR (MP) 221 : (1988) MPLJ 600

Hon'ble Judges : Y.B. Suryavanshi, J;C.P. Sen, J

Bench : Division Bench

Judgement

Y.B. Suryavanshi, J.

The orders passed in this Misc. Petition No. 2875/83 would also govern the disposal of M.C.C. No. 7 of 1987 (Kirodimal Agarwal v. Shri M.S. Tiwari and another) since the contempt matter arises out of the main petition.

The petitioner, allegedly a forest contractor by profession and owner of a saw mill at Kharsia, has challenged the seizure and orders of confiscation of 107 logs of wood, purportedly passed in exercise of powers u/s 19(1)(b) of the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 (for short called "the Adhiniyam") in respect of the alleged contravention of the provisions of Sections 5(1), 11(1) of the Adhiniyam r/w Rule 4(1), (3), (4) of the M.P. Van Upaj (Vyapar Viniyaman) Kasta Niyam, 1973. Initially, truck No. CPL 687 belonging to the petitioner was seized and was also confiscated but subsequently, the respondent No. 2 had withdrawn the order of confiscation of the truck in question and the same was already released by the orders of this Court on 19-8-84 on Supratnama of the petitioner; and therefore, no relief is sought in respect of the truck.

It is common ground that in the intervening night of 17th and 18th November, 1983, Truck No. CPL 687 belonging to the petitioner was intercepted. It was carrying 107 Bija logs. A seizure memo was drawn in respect of P.O.R. 7210/13.

According to the petitioner, 107 logs of Bija wood valued at Rs. 7600/- carried in the truck for petitioners saw mill were purchased from Manohar Saw Mill, Kharsia

under a Bill of purchase; that the logs bore the hammer mark which showed that they were duly purchased from the forest depot; that he unsuccessfully applied to the forest authorities for release of the truck; that (undisputedly), the petitioner was served with an order of respondent No. 2 passed on 3-12-83 (Annexure E) whereby an amount of Rs. 150/- was imposed on the petitioner by way of composition in exercise of powers u/s 15 for contravention of Sections 5(1), 11(1), of the Adhiniyam, 1969 and Rules 4(1), (3), (4) and (7) of M.P. Van Upaj (Vyapar Viniyaman) Kastha Niyam, 1973 (for short called Kastha Niyam 1973), and a sum of Rs. 50/- as composition was imposed on the driver of the truck viz, Chandu Ram Sharma, for contravention of Rule 4(1), (3) and (4) of the Kastha Niyam 1973. By the same order, in addition to the penalties referred above, the respondent No. 2 held the truck of the petitioner liable to be confiscated for having been used for transport of the said logs. The price of the truck was estimated at Rs. 80,000/- and it was ordered, that on payment of Rs. 80,000/- within 13 days, the truck may be released in" accordance with the powers conferred u/s 19(1)(b) of the Adhiniyam. It was further ordered, that in default, the truck would stand confiscated and shall be accordingly disposed of. By the same order, the logs were also confiscated. The petitioner preferred an appeal which was dismissed by respondent No. 4 Conservator of Forest (Annexure-G).

According to the Return, on behalf of respondents 1 to 4, except 5 logs, all others did not bear the hammer marks which shows that the logs were not obtained from the forest department and it was property in respect of which an offence was committed. Thus, the contention is that forest offence has been committed; that the forest officer had power to confiscate not only the forest produce but also the other material like the truck used in the commission of the offence; that accordingly the impugned orders were legal and quite justified.

Both counsel heard. In view of their submissions, the short points for consideration are:-

(i) "Whether the impugned orders are illegal on principle of violation of natural justice as no show cause notice was issued to the petitioner before passing these orders."

(ii) "Whether the impugned orders dated 3-12-83 (Ann.E) confiscating the logs of wood were within the powers u/s 19(1)(b) of the Adhiniyam."

Apropos show cause notice and the alleged violation of principles of natural justice, it is unnecessary to discuss this aspect further because Annexure-E itself shows that the petitioner had opted for composition as envisaged u/s 19 of the Adhiniyam and on such composition, that order was passed. Therefore, absence of a formal show cause notice in the instant case would not make any material difference. Accordingly, we are of the view that the impugned orders passed in this case are not assailable on this ground.

Point No. (ii)

(a) The learned Counsel for the petitioner Shri Ravindra Shrivastava urged that under the said Adhiniyam, the power of confiscation in respect of the "specified forest produce" has been conferred only on the Court and not on the Forest Officer. On a perusal of the Adhiniyam, we find that Section 2 thereof gives "definitions" and forest produce" and "specified forest produce" have been defined therein. Section 5 relates to" restriction on purchase or transport of specified forest produce". Section 12 relates to disposal of specified forest produce and Section 13 relates to retail sale thereof. Section 15 confers power to enter, search and seizure of specified forest produce in respect of which it is suspected that an offence is committed.

(b) Section 16 is important, and it reads as follows:

16. Penalty.- If any person contravenes any of the provisions of this Act or the rules made thereunder -

(a) he shall be punishable with imprisonment which may extend to one year or with fine which may extend to five hundred rupees or with both;

(b) the specified forest produce in respect of which such contravention has been made or such part thereof as the Court may deem fit shall be forfeited to the Government:

Provided that if the Court is of the opinion that it is necessary to direct forfeiture in respect of the whole, or as the case may be, any part of the specified forest produce it may, for reasons to be recorded, refrain from doing so.

(c) Section 17 relates to "attempts and abatements.

Section 18 provides, that no Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by any Forest Officer not below the rank of a Divisional Forest Officer or by any other officer as may be authorised by the State Government in this behalf". Then we may refer to Section 19 which is relevant for the present controversy, Section 19 reads as follows:

19. Composition of offences.- (1) The State Government, may, by notification, empower a Forest Officer -

(a) to accept from any person against whom a reasonable suspicion exists that he has committed an offence punishable under this Act, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property other than a specified forest produce has been seized as liable to confiscation to release the same on payment of the value thereof as estimated by such officer.

(2) On the payment of such sum of money, of such value or both, as the case may be, to such officer, the suspected persons shall be discharged the property,

other than the specified forest produce, if any, seized to be released, and no further proceedings shall be taken against such person or property.

(3) A Forest Officer shall not be empowered under this Section unless he is a Forest Officer of a rank not inferior to that of a Divisional Forest Officer, and the sum of money accepted as compensation under Clause (a) of Sub-section (1) shall in no case exceed the sum of one thousand rupees."

(d) From the Scheme of the Act stated above, it is clear that if the Court takes cognizance under that Act, then it could be done on a report in writing as provided in Section 18. Under Clause (b) of Section 16 and its proviso referred above, it is the Court which is conferred the powers of forfeiture.

The learned Counsel for the petitioner referred Santosh Kumar Mishra v. State of M.P. 1983 MPLJ 406 : 1983 Cri LJ 1378 [Cr. Revision decided on 30-10-82 (Jabalpur)] for the proposition that though Section 19(1)(b) of the Adhiniyam provides that any property other than a specified forest produce which has been seized as liable to confiscation, the same may be released on payment of the value thereof, there is no provision for confiscation of any property other than the specified forest produce (Para 6 at page 410). It was further observed "that this appears to be a lacuna in the Act as there is no provision for confiscation of any property other than specified forest produce though Section 19(1)(b) provides that any property other than specified forest produce which has been seized as liable to confiscation, the same may be released on payment of the value thereof as estimated by the officer concerned, without there being any specified provision for confiscation."

The learned Govt. Advocate Shri Namdeo tried to justify those impugned orders by stating that such action is justifiable under the Indian Forest Act as amended in M.P. On the other hand, the learned Counsel Shri Ravindra Shrivastava referred Section 22 of the Adhiniyam wherein it has been clearly laid down that nothing contained in the Indian Forest Act, 1927 shall apply to specified forest produce in respect of matters for which provisions are contained in this Adhiniyam and nothing contained in any other law, rule, order or any other thing having a force of law in any region of the State shall apply to the specified forest produce in respect of matters for which provisions are contained in this Act. The non-applicability of Section 55(1) of the Forest Act called Central Act in respect of confiscation for an offence under the said Adhiniyam, was considered in Swaroopchandra Garg Vs. State of M.P. and Others, . In view of Section 22 of the Adhiniyam, its applicability was excluded. It seems that in view of the lacuna in the Adhiniyam, the State Legislature passed the M.P. Van Upaj (Vyapar Viniyaman) Sanshodhan Adhiniyam, 1986 (No. 15 of 87) published in M.P. Gazette Extraordinary dt. 24-1-87 by which inter alia Section 15 has been drastically amended and substituted. The substituted Section now provides for confiscation under certain circumstances prescribed therein. The newly substituted Section 15-A provides an appeal to the Conservator of Forest against the order of confiscation made by the authorised officer, and Section 15-B

provides a revision before the Court of Session against the order of appellate authority.

So far as the present case is concerned, the offence occurred on 17th November, 1983 and the above said amendments would not be applicable in this case. The law as it stood at the relevant date of the offence did not confer any power of confiscation.

To recall, the operative part of the impugned orders dated 3-12-83 so far as it related to the confiscation of the truck has already been withdrawn on 17-1-84 and therefore, no further orders in that matter are necessary. The only grievance of the petitioner relates to the confiscation of 107 logs of wood.

For the aforesaid discussion, this petition is allowed. The impugned orders (Annexure-E) so far as they relate to the confiscation of 107 logs of wood, are hereby quashed. Since there had been the composition of offence and as the law then stood, only the Court, u/s 16 of the Adhiniyam, could have passed orders for forfeiture after a report in writing by forest officer of the facts constituting such offence which had occurred in 1983, the logs of wood shall be returned to the petitioner. In the circumstances, the parties shall bear their own costs of this petition. The outstanding amount of security deposit shall be refunded to the petitioner.

Petition under Article 215 of the Constitution of India (M.C.C. No. 7/87) arises in this case in view of the orders dated 24-8-84 passed by this Court in M.P No. 2875/83. Therein, the petitioner alleged that the logs of wood are lying in open and because of rains, there is possibility of deterioration. And the learned Dy. Advocate General gave an assurance before the Court that the logs will be kept in a shed. The petitioner's contention is that in spite of the above said orders and assurance, the directions were not complied with. The petitioner had filed photographs to show that the logs were lying in open. On the other hand, non-applicant No. 2 D.F.O. in his reply has denied the alleged disobedience of the orders of the Court. The annexures filed with the reply is a letter of Van (parikshetra) Adhikari which shows that the logs were put under a "temporary shed" forth with. It is further stated that in the depot, there is no permanent shed constructed, yet the logs, as per directions, of this Court, were put under a temporary shed. In view of those circumstances, we are of the view that there is no contempt of court's orders. Accordingly, M.C.C. No. 7 of 1987 is dismissed.