
(2003) 04 BOM CK 0077

In the Bombay High Court

Case No : Criminal Writ Petition No. 308 of 2002

Krishnadas Shankarraon Abhare (Dr.)

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 17-04-2003

Acts Referred:

Forest Act, 1927 — Section 61D, 72

Citation : (2003) 04 BOM CK 0077

Hon'ble Judges : R.M.S. Khandeparkar, J;P.S. Brahme, J

Bench : Division Bench

Advocate : De and P. Sharma, for the Appellant; Badar, for the Respondent

Judgement

R.M.S. Khandeparkar, J.—Heard learned Advocates for the parties. Perused record. Rule. By consent, the rule made returnable forthwith.

2. The petitioner challenges the orders passed by the authorities below under provisions of Indian Forest Act, 1927 (hereinafter called as the said Act) on two grounds, firstly that the authorities below could not have relied upon the statements recorded by the various officers in the absence of specific powers being given to them u/s 72 of the said Act and secondly the authorities below could not have disposed of the matter without giving proper opportunity of being heard in the matter to the petitioner.

3. The facts in brief relevant for the decision are that the petitioner is the owner of s Jeep bearing No. MH 34 5529. A show cause notice came to be served upon the petitioner in December, 2001 alleging that the said jeep was utilized for illegal transportation of timber. After the show cause notice was replied to be the petitioner the Assistant Conservator of Forest by its order dated 10-4-2002 directed confiscation and sale of the vehicle in question and therefore, the petitioner filed appeal u/s 61(D) before the Sessions Judge, Chandrapur. However, the learned Sessions Judge, Chandrapur by order dated 17-7-2002 dismissed the said appeal. Hence the present petition.

4. Upon hearing the learned Advocates for the parties and on perusal of the records the following question arise for consideration:

1. Whether Range Forest Officers of the respondent had authority under law to record the statement of witnesses as well as evidence for the purpose of enquiry as regards the allegations against the petitioner reflected in the show cause notice issued to the petitioner ?

2. Whether the records disclose that the petitioner was given sufficient opportunity of being heard in the matter.

5. Section 72 of the said Act provides that the State Government may invest the Forest Officers with certain powers and in terms of Clause (D) of the sub-section (1) the State Government may invest the Forest Officers with powers to hold enquiry in the forest offence and in the course of such enquiry to receive and record the evidence. Apparently, in order to enable the Forest Officer to hold the enquiry into the forest offences, it is necessary for the State Government to invest such officers with the powers to hold such enquiry as well as to receive and record evidence in the course of such enquiry. Similar are the provisions as regards the powers of issuance of search warrant in Criminal Procedure Code, 1973 which are to be found in sub-section (1)(c) of Section 72 of the said Act. Section 2(2) has defines the Forest Officer to mean any person whom State Government or any officer empowered by the State Government in that behalf may appoint to carry out or any of the purposes of the said Act or to do anything for the said Act or any Rule made thereunder to be done by the Forest Officer.

6. As the records placed before us do not disclose any notification having been issued by the State Government authorizing Range Forest Officer to record evidence and/or to record the statement of the witnesses in the course of enquiry in relation to the Forest Offence under the said Act, time was granted to respondents to place on record, the notification in that regard. The learned Advocate appearing for the respondent, however, has been able to locate only two such notifications having been issued by the Government, the notifications being dated 1-10-1942 and the other being dated 21-4-2001. In terms of the first notification dated 1-10-1942 it appears that Conservators, Deputy Conservators and Assistant Conservators were bestowed with the powers u/s 72 of the said Act. It is only by notification dated 21-4-2001 it appears for the first time u/s 72(1)(a), (b), (c) and (d) powers were given to all Range Forest Officer (Protection), Range Forest Officer (Territorial), Range Forest Officer (Mobile Squad) and Range Forest Officer (Wildlife) in charge of Wildlife Range in the State of Maharashtra and as regards powers u/s 72(1)(a) it was given to all foresters in charge of a round. In other words prior to 21-4-2001 no officer below the rank of Deputy Conservator of Forest was empowered to record evidence or to record the statement of witnesses in relation to any enquiry pertaining to various offences under the said Act. Admittedly in the case in hand enquiry was conducted prior to 21-4-2001. The alleged offence also committed prior to 21-4-2001. Undisputedly the statements were recorded by the Range

Forest Officer and not by the Assistant Conservator of Forest or any other officer of higher rank than the Assistant Conservator of Forest. Being so, as rightly submitted by the learned Advocate for the petitioner the authorities below were not entitled to rely upon the statements recorded by any such officer who was not authorized officer in terms of the said notification dated 1-10-1942 though the other officers were entitled to record panchanama in relation to any seizure of any article which can be subjected to seizure in terms of section 52(1) of the said Act. Since both the judgments are based on materials which were collected by the officers who were not empowered to collect the same in the form of recording of statements, certainly the orders passed by the authorities below can not be sustained and are liable to be set aside.

7. The learned Advocate for the respondents, however, has submitted that considering the fact that the orders which were passed by the authorities below were duly empowered to hold enquiry into the matter u/s 72, the contention that those authorities had no jurisdiction to pass the order is liable to be rejected. Undoubtedly in view of the notification dated 1-10-1942 Assistant Conservator of Forest was duly empowered to hold enquiry u/s 72. Being so, the learned Advocate for the respondent is justified in contending that the authorized officer had jurisdiction to hold enquiry and to pass appropriate order. Certainly on account of order having been passed on the basis of the materials which were not admissible in evidence and not permissible to rely upon in such enquiry, the judgments and orders might stand vitiated, nevertheless it can not be held that the authorities below had no jurisdiction to deal with the matter. Hence the learned Counsel for the respondent is justified in contending that in the circumstances, the matter will have to be required to be remanded to the respondent No. 2 to deal with the same afresh in accordance with the provisions of law. We make it clear that we have not expressed any opinion on the merits of the case. Leaving all the points open for adjudication by the competent authorities under the said Act, the matter needs to be remanded to the respondent No. 2 for the same to be dealt with afresh and in accordance with provisions of law.

8. Considering the view we have taken in the matter, it is not necessary to address to the second ground of challenge in the matter as it does not survive since the petitioner will get sufficient opportunity to contest the proceedings once the matter is remanded to the respondent No. 2 to deal with the same afresh. In the result, therefore, the impugned judgments and orders are hereby quashed and set aside. The matter is remanded to the respondent No. 2 to decide the same afresh in accordance with the provisions of law. Rule made absolute in above terms with no order as to costs.