
(2011) 11 CHH CK 0038
In the Chhattisgarh High Court
Case No : Writ Petition No. 484 of 2001

Lala @ Uma Kant Shrivastava

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Forest Act, 1927 — Section 52, 52(4), 55

Citation : (2012) 1 CGBCLJ 307 : (2012) 2 MPHT 93

Hon'ble Judges : T.P. Sharma, J

Bench : Division Bench

Advocate : P.K.C. Tiwari and Mr. Shashi Bhushan, for the Appellant; Sushil Dubey, Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

T.P. Sharma, J.—By this petition under Article 226/227 of the Constitution of India the petitioner has challenged the legality and propriety of the order dated 28-2-2001 passed by the Fifth Additional Sessions Judge, Durg, in Criminal Revision No. 258/2000, affirming the order dated 30-8-2000 passed by the Appellate Authority and Conservator of Forest, Durg and the order dated 22-3-2000 passed by the authorised authority/Sub Divisional Officer (Forest), Khairagarh under Forest Act, whereby the authorised authority/Sub Divisional Officer has passed the order of confiscation of vehicle Tata 407 No. M.P. 26 B-0535, on the ground that the petitioner was not having transit pass/valid permit for transportation of wood. The short question of law involved in the present case is whether the vehicle, tools, boats, ropes, chains and other articles used for timber or forest produce which in either case is not the property of the Government and in respect of which the forest offence has been committed, can be confiscated without conviction of the offender in terms of Section 55 of the Indian Forest Act, 1927 (for short "the Act, 1927").

2. As per nutshell case, trees are standing in Government Kotwari land owned

and possessed by Kotwar. The petitioner was transporting/carrying the same. At the time of transportation the petitioner was not having any transit pass or valid permit for transportation of such forest produce. Forest produce along with vehicle were seized. After intimation u/s 52 (4) of the Act, 1927 the authorised authority and Sub Divisional Officer, Khairagarh, initiated confiscation proceeding and after providing opportunity of hearing to the parties, order of confiscation relating to vehicle belonging to the petitioner has been passed. Same was challenged before the Appellate Authority and Conservator of Forest, Durg and Appellate Authority has affirmed the order passed by the authorised authority. Again it was challenged before the Fifth Additional Sessions Judge, Durg in Criminal Revision No. 258/2000 and by the order impugned the Revisional Court has also affirmed the orders.

3. I have heard learned Counsel for the parties, perused the order impugned, orders of the authorised-authority and Appellate Authority and copies of other documents filed on behalf of the petitioner.

4. Learned Counsel for the petitioner vehemently argued that important question of law involve in the present case for consideration is whether in case of timber or forest produce not belonging to the Government any forest offence is committed then whether without conviction of the offender, vehicle, tools, boats, ropes, chains and other articles can be confiscated. Learned Counsel further argued that in order to pass the order of confiscation relating to timber and forest produce not belonging to the State Government conviction of the offender is sine qua non in accordance with Section 55 of the Act, 1927. Learned Counsel also argued that in the present case, the offender has been acquitted. Even otherwise, the State has not produced any document to show that offender has been convicted, therefore, confiscation of such forest produce was not legally possible for authorised authority in accordance with Section 55 of the Act, 1927.

5. On the other hand, learned Government Advocate for the State/ respondent opposed the petition and argued that the present petitioner was transporting the forest produce by his vehicle without any transit pass or valid permit, in these circumstances, vehicle was liable for confiscation u/s 52 of the Act, 1927 and by confiscating the vehicle and affirming the order of confiscation the Appellate Authority and Revisional Authority have not committed any illegality warranting interference in exercise of supervisory jurisdiction under Article 227 of the Constitution of India.

6. Special provision relating to confiscation of vehicle, tools, boats, ropes, chains and other articles has been made in Section 52 of the Act, 1927 by M.P. Amendment Act No. 25 of 1983. Section 55 of the Act, 1927 has also been amended which reads as under:--

55. Forest produce, tools, etc., when liable to confiscation. - (1) All timber or forest produce which in either case is not the property of the Government and in respect of which a forest offence has been committed, and all tools, boats,

vehicles ropes, chains or any other article, in each case used in committing any forest offence, shall subject to provisions of Sections 52, 52-A, 52-B and 52-C, be liable to confiscation upon conviction of the offender for such forest offence. (2) Such confiscation may be in addition to any other punishment prescribed for such offence.

7. As per Section 52 of the Act, 1927, general procedure has been prescribed for confiscation of vehicle, tools, boats, and other articles used in commission of forest offence, but special provision relating to confiscation of vehicle and other articles used in commission of forest offence in which timber or forest produce are not property of the State Government has been made in Section 55 of the Act, 1927.

8. Section 55 of the Act, 1927 is exception to general rule and in accordance with Section 55 of the Act, 1927, if timber or forest produce is not the property of the Government and forest offence has been committed, then vehicle and other articles may be confiscated only upon conviction of the offender for such forest offence, i.e., in case of timber or forest produce is not the property of the Government, then for confiscation of vehicle and other articles conviction of offender for commission of forest offence is sine qua non.

9. In order to confiscate such vehicle and other articles the prosecution or the State is required to prove that offender has been convicted, thereafter vehicle or articles may be confiscated by the authorised authority. In the present case, State authorities have not filed any document to prove the fact that the offender has been convicted for commission of such forest offence.

10. In absence of such proof, i.e., conviction of the offender, vehicle and other articles were not liable for confiscation in terms of Section 55 of the Act, 1927. By confiscating the vehicle and affirming the order of confiscation the authorised authority, Appellate Authority and Revisional Authority have committed illegality and jurisdictional error. Order impugned and orders passed by the Appellate Authority and authorised authority for confiscation of vehicle are not sustainable under the law. Consequently, the petition deserves to be allowed and it is hereby allowed. Order of confiscation dated 22-3-2000 passed by the authorised authority and Sub Divisional Officer, Khairagarh, order dated 30-8-2000 passed by the Appellate Authority and Conservator of Forest, Durg and the order dated 28-2-2001 passed by the Fifth Additional Sessions Judge Durg, in Criminal Revision No. 258/2000 are hereby quashed. No order as to costs.