

(2008) 08 BOM CK 0039

In the Bombay High Court

Case No : Criminal Writ Petition No. 19 of 2007

Mangal Deshmane

APPELLANT

Vs

The State of Maharashtra and District Forest Officer

RESPONDENT

Date of Decision : 20-08-2008

Acts Referred:

Forest Act, 1927 — Section 61A, 61B, 61B(2), 61D

Citation : (2008) 110 BOMLR 2814 : (2009) 5 RCR(Civil) 228

Hon'ble Judges : B.R. Gavai, J

Bench : Single Bench

Advocate : Himmatsinh D. Deshmukh, for the Appellant; R.R. Mane, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

B.R. Gavai, J.—By way of present petition, the petitioner challenges the order dated 17th May 2006 passed by the Range Forest Officer, Ahmednagar, to the effect that the jeep bearing No. MH-17/K-752 be deposited to the Government as the same was used in cutting of sandal trees unauthorizedly. The petitioner has also challenged the order dated 1st December 2006 passed by the learned Additional Sessions Judge, Shrirampur, in Criminal Appeal No. 16/2006, thereby dismissing the appeal filed by the present petitioner.

2. The facts, in brief, giving rise to the present petition are as under:

A complaint came to be lodged by one Namdeo Bapurao Javale on 9th December 2005, alleging therein that on 9th December 2005, he heard sound of a tree falling. He states that when he got up, he was assaulted by stick by three persons. The complainant further states that the relatives of the complainant came there and there was a scuffle between the thieves and the villagers. It is further stated that the said tree was taken away by unknown persons in a greenish jeep. During the investigation, the aforesaid jeep came to be seized by the Police on 10th March 2006. The matter was reported to the concerned Forest

Officer on 30th March 2006 and subsequently vide order dated 17th May 2006, the said jeep came to be confiscated.

3. Being aggrieved by the order of confiscation, an appeal as provided u/s 61-D of the Indian Forest Act, 1927 (For short, "the Act"), was filed by the present petitioner. The same is also dismissed. Hence, the present petition.

4. Mr. H.D. Deshmukh, learned Counsel appearing for the petitioner, submits that the impugned order is not sustainable in law inasmuch as a show cause notice which is contemplated u/s 61-B of the Act is not issued to the present petitioner before the order of confiscation came to be passed u/s 61-A of the Act. Relying on the judgment of Division Bench of this Court in the case of Inderjit Singh v. State of Maharashtra 1990(3) Crimes 779 , it is submitted that since there was no show cause notice, the impugned orders are liable to be set aside on the said ground alone. He further submits that since the authorities have failed to establish that the jeep of the petitioner was used in the crime with the knowledge of the petitioner, the confiscation was not sustainable in law. He relies on the judgment of the Apex Court in the case of Assistant Forest Conservator and Others Vs. Sharad Ramchandra Kale, , in this regard.

5. Section 61-A of the Act provides for confiscation by Forest Officers of forest-produce when forest-offence is believed to have been committed. Sub-Section 1 of the said Section requires that the officer seizing the property under Sub-Section (1) of Section 52 shall, without any unreasonable delay, produce it, together with all tools, boats, vehicles and cattle used in committing such offence, before an officer authorised by the State Government in this behalf by notification in the Official Gazette, not being an officer below the rank of an Assistant Conservator of Forests. Sub-Section 3 of the said Section permits an Authorised Officer to pass an order regarding confiscation of the property so seized together with all tools, boats, vehicles and cattle used in committing such offence.

6. Section 61-B of the said Act reads thus:

Issue of show cause notice before confiscation u/s 61-A - (1) No order confiscating any timber, sandalwood, firewood, charcoal or any other notified forest-produce, tools, boats, vehicles or cattle shall be made u/s 61-A except after notice in writing to the person from whom it is seized and considering his objections, if any:

Provided that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so, and considering his objections, if any.

(2) Without prejudice to the provisions of Sub-section (1), no order confiscating any tool, boat, vehicle or cattle shall be made u/s 61-A if the owner of the tool, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, sandalwood, firewood, charcoal or any other

notified forest-produce without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

It could thus be seen that the proviso to Sub-Section 1 of Section 61-B mandates that no order confiscating a motor vehicle shall be made except after giving notice in writing to the registered owner thereof and after considering his objections, if any. Sub-Section 2 of Section 61-B further provides that no order confiscating any tool, boat, vehicle or cattle shall be made u/s 61-A if the owner thereof proves to the satisfaction of the authorised officer that it was used in carrying the timber, sandalwood, firewood, charcoal or any other notified forest-produce without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

7. The notice on which the learned Additional Public Prosecutor relies reads thus:

A crime has been registered in your name for cutting of sandal trees, being Crime No. I-123/05 at Police Station, Sonai, and with reference to the said cutting of sandal trees, an enquiry is to be made in the capacity of Tree Officer. For that, you are asked to remain present in this office on 16-5-2006 at 11.00, otherwise it should be noted that a further action would be taken.

8. The Division Bench of this Court, in the case of Inderjit Singh v. State of Maharashtra (*supra*) has observed thus:

Section 61-B requires the Authorised Officer to give show cause notice to the delinquent person before any action is taken against him u/s 61-A(3) of the Forest Act. If the purpose of the show cause notice is to give an opportunity to the delinquent person, upon the matters upon which the Authorised Officer is going to take action against him u/s 61-A, it is necessary that the show cause notice must contain all material allegations against the delinquent person on the basis of which action is proposed to be taken against him so that he has proper opportunity to meet the same. The provisions of Section 61-B are mandatory.

9. As aforesaid, a valuable right is available to the owner of the vehicle under Sub-Section 2 of Section 61-B of the said Act. He can bring to the knowledge of the authority, that the vehicle was being used for the said purpose without his knowledge or connivance. As has been held by the Division Bench of this Court in the case of Inderjit Singh (*supra*), that the show cause must contain all material allegations on the basis of which the action is proposed to be taken against delinquent person so that he has proper opportunity to meet the same. In the present case, the alleged notice which is reproduced herein above, can hardly be said to have complied with said requirement. Leave apart giving necessary details, the said show cause notice does not state that an action as contemplated u/s 61-A of the Act is sought to be taken against the present petitioner. In that view of the matter, I find that the present case is squarely covered by the

judgment of Division Bench of this Court in the case of Inderjit Singh (supra).

10. One more ground on which the petitioner is entitled to succeed in the petition, is the exercise of power by an authority not competent to do so. As I have stated herein above, that the action u/s 61-A of the Act can be taken only by an officer authorised in that respect by the State Government by notification in the Official Gazette, not below the rank of an Assistant Conservator of Forests. It would, therefore, be interesting to reproduce the averments made in the affidavit in reply filed on behalf of the State, which are as under:

I further say and submit that, it is correct to say that initially the said vehicle was seized by the police authorities by following due procedure of law and thereby the Range Forest Officer, Ahmednagar, passed an order of confiscation of the seized vehicle by giving notice and proper opportunity of being heard to the petitioner.

It could thus be seen that in the reply itself, the State has stated that the order of confiscation has been passed by the Range Forest Officer, Ahmednagar. Undisputedly, the office of the Range Forest Officer is below the rank of Assistant Conservator of Forests. As such, the impugned order is not sustainable on this ground also. I am, therefore, inclined to allow the petition.

11. Hence, petition is allowed.

The impugned order dated 17th May 2006 passed by the Range Forest Officer, Ahmednagar, to the effect that the jeep bearing No. MH-17/K-752 be deposited to the Government as the same was used in cutting of sandal trees unauthorizedly, is quashed and set aside. So also, the order dated 1st December 2006 passed by the learned Additional Sessions Judge, Shrirampur, in Criminal Appeal No. 16/2006, thereby dismissing the appeal filed by the petitioner, is quashed and set aside.

12. Rule is made absolute accordingly.