

(2015) 06 KAR CK 0326

In the Karnataka High Court

Case No : Writ Petition No. 58231 of 2014 (GM-FOR)

Mayura

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 09-06-2015

Acts Referred:

Citation : (2015) 4 AKR 446 : (2016) 6 FLT 93 : (2015) 4 KarLJ 353

Hon'ble Judges : A.S. Bopanna, J

Bench : Single Bench

Advocate : P.P. Hegde, for the Appellant; R.B. Satyanarayan Singh, Additional Government Advocate, Advocates for the Respondent

Final Decision : Disposed off

Judgement

A.S. Bopanna, J—The petitioner is before this Court assailing the order dated 9-5-2014 passed by the Authorised Officer and Deputy Conservator of Forests, Mangalore Division and the order dated 30-10-2014 passed by the V Additional Sessions Judge, Dakshina Kannada in Criminal Appeal No. 124 of 2014 which are impugned at Annexures-F and H to the petition. The petitioner is the registered owner of the Eicher Canter Lorry bearing No. KA-04 D 1265. The petitioner claims that in addition to the said vehicle, he owns few other vehicles and is running a transport business in the name and style of "Mayur Transport". The vehicle in question was purchased by the petitioner on 20-11-2011 for Rs. 8,00,000/- by raising loan from the India Bulls Financial Services and was paying EMI of Rs. 23,837/-. During the course of his business, he was transporting goods to Max Hyper Market, Mangalore. On the return journey, his driver Harish G. on 3-9-2013 had allowed certain unauthorised persons to board the vehicle and allowed their goods to be carried as the lorry was coming back from Mangalore to Bengaluru after unloading the goods at Mangalore. It is only when the Forest official intercepted the vehicle, the driver came to know that the persons who had engaged the vehicle had allegedly loaded some forest produce. In any event, the case in that regard has been registered and the proceedings

under Section 71-D of the Karnataka Forest Act, 1963 is before the Authorised Officer.

2. In the pending proceedings, the petitioner herein being the owner of the vehicle which had been seized, made an application seeking interim custody of the said vehicle. The application was rejected by the Authorised Officer by the impugned order dated 9-5-2014. The said order was assailed before the V Additional Sessions Judge, Dakshina Kannada in Criminal Appeal No. 124 of 2014. The Court below though had taken note of the contention put forth by the petitioner was of the view that no documents had been produced to establish the fact that a loan had been obtained by the petitioner to purchase the vehicle and in that view, the order passed by the Authorised Officer was set aside and the matter was remitted for reconsideration for providing an opportunity to the petitioner to produce the documents before the Authorised Officer. The petitioner claiming to be aggrieved by the said order is before this Court.

3. Learned Counsel for the petitioner would refer to the petition papers to contend that even as per the documents made available, the fact that the petitioner had obtained loan to purchase the vehicle is evident. It is contended that even otherwise, the petitioner is a Transport Contractor and it is due to inadvertence of his driver, certain other persons have made use of the vehicle and these aspects in any event would be established before the Authorised Officer in the said pending proceedings. It is contended that in the meanwhile, if the vehicle is allowed to remain in the custody of the Authorised Officer, the same would deteriorate and as such, the vehicle be released to the petitioner. Further the loan is to be discharged despite the vehicle remaining idle.

4. Learned Government Advocate would however contend that the documents produced to establish that a loan had been obtained could still be produced before the Authorised Officer as the Court below has remitted the matter for the said purpose and as such, the consideration need not be made in this petition. It is his further contention that in any event, when a vehicle has been seized for committing a forest offence, as held by the Hon"ble Supreme Court, the Courts should be slow in releasing the vehicle.

5. Having noticed the rival contentions, there can be no serious dispute with regard to the fact that the petitioner is the owner of the vehicle concerned. From the documents produced at Annexure-A, it is seen that the vehicle was hypothecated to India Bulls Financial Services Limited. Further, the petitioner has also relied on the transport contract to establish that it was in that view, the vehicle was being plied in that area when it was intercepted. In any event, the question as to whether the driver of the petitioner or the petitioner was involved in the commission of a forest offence need not be adverted to at this stage. The Forest Officer in any event would consider the matter in detail while conducting the proceedings initiated under Section 71-D of the Karnataka Forest Act. All that is necessary to be considered herein is with regard to the prayer made by the petitioner for interim custody of the vehicle.

6. From the materials available on record, I am satisfied that the vehicle was purchased on loan and the same has been hypothecated. Even assuming for a moment that such fact had not been established at the first instance before the authorities, the question is also as to whether during the consideration of the proceedings, the vehicle should be allowed to remain idle. In the present case, there is no material to indicate that either the petitioner or his vehicle was a subject-matter in any other earlier similar offences committed. In the instant case, if the vehicle is ordered to be released, on the petitioner providing sufficient security for producing the vehicle as and when called upon by the Authorised Officer, the ends of justice would be met. Therefore, the order dated 9-5-2014 and the order dated 30-10-2014 impugned herein are set aside. The second respondent-Authorised Officer is directed to release the vehicle, bearing No. KA-04 D 1265 to the petitioner, subject to the condition that the petitioner shall furnish a bank guarantee for a sum of Rs. 5,00,000/- (Rupees Five Lakhs only) or the documents relating to immovable property to the satisfaction of the second respondent, the value of which shall be more than Rs. 5,00,000/-. The petitioner may choose either of the security to be furnished before the second respondent. The security/bank guarantee furnished shall remain in force till the conclusion of the proceedings before the Authorised Officer. The petitioner shall also file an undertaking to produce the vehicle before the Authorised Officer as and when called upon by the Authorised Officer. On production of the security and satisfaction being recorded, the vehicle shall be released forthwith. Ultimately on conclusion of the proceedings, if it is found that the vehicle is to be forfeited, the petitioner shall produce the same before the second respondent at that stage. In the event of the petitioner furnishing security of any property which does not belong to the petitioner, the person furnishing such security shall also appear before the Authorised Officer and give his undertaking with regard to the same.

In terms of the above, the petition stands disposed of.