
(1993) 09 CAL CK 0013
In the Calcutta High Court
Case No : C.R. No. 1208 of 1993

Md. Yasin

APPELLANT

Vs

Authorised Officer and Others

RESPONDENT

Date of Decision : 22-09-1993

Acts Referred:

Constitution of India, 1950 — Article 227
Forest Act, 1927 — Section 59A, 59C, 59D

Citation : (1994) 1 CALLT 351 : 98 CWN 696

Hon'ble Judges : Samir Kumar Mookherjee, J; Bijitendra Mohan Mitra, J

Bench : Division Bench

Advocate : S.K. Pal, Subhra Kamal Mukherjee and Amit Moitra, for the Appellant; Niladri Bhattacharjee, for the Respondent

Judgement

Samir Kumar Mookherjee, J.—This revisional application, under Article 227 of the Constitution of India, is directed against Order, dated 24th May, 1993, passed by the learned Assistant District Judge, 2nd Court, Jalpaiguri, in Misc. Appeal No. 34 of 1992, u/s 59D of the Indian Forest Act, By the impugned Order, the learned Judge has been pleased to send the case back on remand to the Authorised Officer, Jalpaiguri District, and Divisional Forest Officer, Jalpaiguri Division, for rehearing of the case in the light of the observations made therein, with a further direction to pass a fresh Order according to law.

2. The facts of the case, in short, is that on 25th March, 1992, at about 12-00 noon, the Motor Vehicle No. BPL 4344, which was approaching Tista Bridge, was signaled to stop at the Check Post. The driver of the said vehicle on noting the signal slowed down its speed and thereafter accelerated the same stating that the vehicle was loaded with coal. On suspicion, the vehicle in question was intercepted by the Forest Officials and it was alleged. to be found that the vehicle was carrying green and freshly sawn sal timber, measuring 8.148 Cu. M., without any government hammer mark.

3. The driver or khalasi or other occupants of the said vehicle in question failed

to produce any transit pass or other documents for transportation of the said timber. The truck, alongwith 164 pieces of Sal timber, were seized and occupants of the said vehicle including the driver were arrested. Thereafter a notice to show-cause was issued, u/s 49A(iii) of the Indian Forest Act on 29.4.1992. The show-cause notice was duly attended to on 21st May, 1992 and the matter was thereafter heard by the Forest Officer. In course of the hearing the authorised officer examined the driver, khalasi and other persons, on behalf of the defence, and thereafter forest official was examined. The authorised officer, on being satisfied, passed an order for confiscation of the vehicle.

4. Against the aforesaid order, Misc. Appeal No. 34 of 1992 was preferred before the 2nd Court of learned Additional District Judge at Jalpaiguri, who came to a finding, on the contested hearing, that in the connected, case, evidence, on the side of the accused, and his men were taken first and thereafter the authorised officials were examined. The satisfaction thus arrived at by the initial adjudicating authority was set at naught and the Appeal Court was of the view that the procedure resorted to was irregular and violative of natural justice. Accordingly, the Appeal Court held that the authorised official should have been examined first and thereafter the evidence of the accused should have been recorded. Thus in the wake of such finding the Misc. Appeal was remitted back, on remand, to the forest officer, Jalpaiguri, with a view to rectify the procedural defects and to rehear the case and to pass a fresh order according to law.

5. From the trend of rival submissions it appears to us that we have been invited to adjudicate the scope and extent of powers conferred on the appellate forum by Section 59D of the Indian Forest Act as amended in West Bengal. It will be useful, at this stage, to quote the relevant part of the said section :-

....."District Judge shall, after giving the appellant and the Officer, who passed the order, an opportunity of being heard, pass an order, confirming, modifying or annulling the order appealed against."

6. From a careful reading of the said section it is found that the learned District Judge is required to hear the appellant, who may be "any person aggrieved" necessarily thus including not only the offender but any other person, and the officers also are required to be heard; secondly, the District Judge can by his order confirmed, modify or annul the impugned order. It is to be borne in mind that the subject-matter of challenge, in terms of Section 59D referred to above, may be an order u/s 59A or 59C. 59A lays down the procedure for confiscation by forest officer of forest produce, where forest offence is believed to have been committed, as also other things and materials used for commission of the same. 59C lays down the procedure for a revision, before a superior forest officer, of the order passed u/s 59A. That the District Judge has power confirming or annulling an order of confiscation or an order of revision is an accepted position and, therefore, it can be said also to be incontrovertible that his authority extends to passing of an order which may be beneficial or adverse to either of the parties to the appeal. In the background of such admitted position, the

controversy before us has been as to whether under the authority to modify the District Judge also has the power to remand. Mr. Mukherjee's submission, in substance, is that the power to remand, not having been expressly conferred cannot be exercised in terms of the authority to modify. According to him the power to modify must always end with an order in favour of the aggrieved person.

7. We are afraid we cannot accept the said contention of Mr. Mukherjee. The term "modify" as defined in Oxford English Dictionary and relied on by the Supreme Court in the case of *Puranlal Lakhanpal Vs. The President of India and Others*, , means, inter alia, "to make partial changes in; to change (as object) in respect of some of its qualities; to alter or vary without radical transformation." Similarly, the word "modification" was accepted by the Supreme Court in the said case to mean "the action of making changes in an object without altering its essential nature or character the state of being thus changed; partial alteration." The Supreme Court, in the said case, also relied on the definition of the term "modify," as given in "words and phrases" by Roland Burrows as "not only "to limit" or "restrict" but also "to vary" or "to extend" or "enlarge." The Supreme Court, in principle, laid down that "modification" ought to be given a wider meaning. In another decision of the Supreme Court in the case of *The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona*, , the word "modify" fell for construction and while doing so the Supreme Court laid down that in widening the meaning of an expression all kinds of alterations, including enhancement (in that particular case), could be held to be permissible. The said meanings, as adopted and accepted by the Supreme Court, may conveniently and consistently be applied with regard to section. 59D of the Forest Act. To hold otherwise would be to curtail the inherent power of an Appellate Court, which has been judicially recognised and accepted (vide *Ghuznani v. Allahabad Bank* reported in AIR 1917 Cal, 44 and *Brij v. Kanshi* reported in AIR 1917 PC 156). The said inherent power of remand, presumed in a Court of law, exists for enabling it to do what is right and just for which the Court exists. Lastly, we intend to justify such interpretation of ours by reiterating a well-known canon of construction, namely, that all procedures are open to Court unless specifically prohibited. For the reasons above, we hold that the Court of Appeal in Section 59D of the Indian Forest Act, as, amended in West Bengal, has power of remand.

8. Having thus found the authority to remand in the appellate Court we, now, proceed to find out whether on the reasons given by the said Court the impugned order is sustainable. The answer must be in the negative as the remand itself might enable the lacunae in the evidence to be filled up. Mere recording of the evidence of the owner and khalasi of the vehicle in question and forest official subsequently did not result in such irregularity or illegality as to cause serious prejudice to the former. A comparison with analogous provisions under Chapter XXXIV of the Code of Criminal Procedure shows that Section 59A, introduced by the West Bengal amendment, is. in the nature of an enquiry and not a criminal trial. In such an enquiry mere recording of statement or evidence of the owner or

khalasi, prior to the recording of evidence of the forest officer cannot be said to have vitiating effect causing prejudice so as to warrant a remand. Moreover, by remanding the matter for a further consideration on that ground would really serve no purpose. Liberty to record evidence afresh may, on the contrary, prejudice the applicant for return of the vehicle.

9. We accordingly, set aside the appellate order and direct the learned District Judge to hear the appeal afresh on the available materials on record subject to the findings as made above. The learned Judge, after remand, is directed to dispose of the appeal, as expeditiously as possible and preferably, within a period of two months from the date of communication of this order.

The Rule is thus made absolute to the extent indicated above.

There will be no order as to costs.

Let xerox copies of this order passed today be handed over to both the learned advocates for the contesting parties on the usual terms on their undertaking to apply for and obtain urgent certified copies.