
(2008) 10 JH CK 0039
In the Jharkhand High Court

Most. Dulia

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Forest Act, 1927 — Section 33, 52

Citation : (2009) 1 JCR 22

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—The petitioner has prayed for quashing of the order dated 11.9.2001 (Annexure 3) passed in Confiscation Case No. 4 of 2001 and also quashing of the order dated 21.8.2002/6.5.2002 (Annexure 4) passed by Deputy Commissioner, Hazaribagh in appeal, bearing No. 103 of 2001 and also to quash the order dated 20.6.2003 (Annexure 5) passed by Secretary, Forest and Environment Department, Government of Jharkhand, Ranchi in Confiscation Revision No. 4 of 2003 whereby order passed by the Confiscating Officer has been affirmed.

2. Brief facts of the case are that when the forest guard in course of patrolling on 29.1.2001 at about 6 P.M. did find that some miscreants after falling saplings trees got the boulders loaded on a truck bearing No. BRM-2621 within Bhandwar division of forest boundary, he seized the truck along with loaded boulders and the driver was arrested. The driver failed to produce any document and hence, a case was lodged u/s 33 of the Indian Forest (Bihar Amendment Act, 1990), Act, 1927.

3. Subsequently, the matter was referred for initiation of confiscation proceeding before the Divisional Forest Officer, who, in turn, made request to the District Transport Officer to send the name and address of the truck owner. After obtaining such information, notice was sent to the truck owner. However, in the

meantime, one Tulsi Sao by filing show cause intimated to the Divisional Forest Officer that after the death of Janki Mistry, owner of the said truck, he had purchased the said truck from widow and sons of Janki Mistry. Thereupon notice was served upon the petitioner, widow of Janki Mistry, who also admitted before the Divisional Forest Officer that she had sold the truck to Tulsi Sao but name of Tulsi Sao had not been transferred in the certificate of registration. It appears that District Transport Officer also intimated to the respondent No. 4 that after the death of Janki Mistry, his legal heirs are owners of the said truck. Thereafter respondent No. 2 after holding that forest offence has been committed in which truck in question was involved and hence, truck is liable to be confiscated under the provision of Section 52 of the Indian Forest Act (as amended by Bihar Amendment Act, 1990). The said order on being challenged before the appellate authority and also before the revisional authority remained intact and consequently order passed by the Confiscating Officer got affirmed.

4. Being aggrieved with those orders, this writ application has been filed.

5. Learned Counsel appearing for the petitioner submitted that the petitioner, widow of Janki Mistry, who had died much before the date of occurrence as well as her sons being heirs of Janki Ram had sold the truck to one Tulsi Sao but the truck in question could not be transferred in the name of Tulsi Sao and hence, the petitioner is still owner of the vehicle in terms of the provision of the Motor Vehicles Act and as such, this writ application has been filed on behalf of the petitioner.

6. It was further submitted that the impugned orders are quite bad as Confiscating Officer, respondent No. 2 before passing final order of confiscation has never recorded the finding that the owner of the vehicle had knowledge that his/her vehicle was likely to be used for carrying forest produce in contravention of the provision of the Act though this requirement was a condition precedent for passing confiscation order.

7. In this regard learned Counsel has referred to a decision rendered in a case of Assistant Forest Conservator and Ors. v. Sart Ramchandra Kale as reported in 1998(1) PLJR (SC) 21 and also in a case of Naresh Singh and Anr. v. State of Bihar and Ors. 2002(1) JLJR 660.

8. Thus, it was submitted that order passed by the Confiscating officer and also by the appellate authority as well as revisional authority are fit to be quashed.

9. As against this, learned Counsel appearing for the respondents submitted that admittedly the petitioner is not the owner of the truck as according to her version, the truck had already been sold to one Tulsi Sao and when she does not have any right or interest over the truck, she cannot maintain this writ application and, as such, this writ application is fit to be dismissed on this ground.

10. It was further submitted that confiscating authority after having been satisfied that the forest offence under the Forest Act has been committed in

which truck in question was involved, has passed the order, which has been confirmed by the appellate authority as well as revisional authority, does not suffer from any illegality.

11. Having heard learned Counsel appearing for the parties it be recorded that Janki Mistry, who before the lodgment of the case had died, was a registered owner of the truck in question. After the death of Janki Mistry, the petitioner and her sons sold the truck to one Tulsi Sao but name of Tulsi Sao never got transferred and therefore, it was reported by the District Transport Officer to the Confiscating Officer that owner of the vehicle is the petitioner and her sons after the death of Janki Mistry. In that situation, petitioner would always be considered to be owner of the vehicle in question in terms of the provision of the Motor Vehicles Act as after the death of the husband of the petitioner, certificate of registration as per the District Transport Officer, Hazaribagh stands in the name of the petitioner.

12. In this respect reference of a case of Chandra Shekhar Jha v. State of Bihar and Anr. as reported in 1982 BBCJ 664 is made.

13. Once the petitioner is taken to be an owner of the vehicle, I do not find any substance in the submission advanced on behalf of the State that the petitioner cannot maintain this writ application.

14. Coming to other aspect of the matter, it be recorded that none of the authorities either Confiscating authority or appellate authority as well as revisional authority has recorded the finding before passing final order of confiscation that the owner of such vehicle had knowledge that his vehicle was likely to be used for carrying forest produce in contravention of provision of the Act, though in terms of the provision as contained in Sub-section (5) of Section 52 of the Indian Forest Act, 1927, Confiscating officer is required to arrive at that conclusion. The said provision reads as follows:

No order of confiscation under Sub-section (3) of any tools, arms, boats, vehicles, ropes, chains or any other article (other than the forest produce seized) shall be made if any person referred to in Clause (b) of Sub-section (4) proves to the satisfaction of authorized officer that any such tools, arms, boats, vehicles ropes, chains or other articles were used without his knowledge or connivance or as the case maybe, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest offence.

15. Keeping in view the said provision this Court in the case of Naresh Singh and Ors. v. State of Bihar and Ors. 2002(1) JLJR 660 and the Hon'ble Supreme Court in a case of Assistant Forest Conservator and Ors. v. Sart Ramchandra Kale as reported in 1998(1) PLJR (SC) 21 has held that before passing final order of confiscation Confiscating Officer must record a finding after appreciating evidence that the owner of such vehicle had knowledge that his vehicle was likely to be used for carrying forest produce in contravention of the provisions of the

Act.

16. It would be worth while to note here that after the death of Janki Mistry, the petitioner became owner of the vehicle which got involved in on commission of an offence under the Forest Act and it was recorded by the confiscating officer that at the instance of the petitioner offence under Forest Act has been committed but that finding seems to have been recorded without there being any evidence. In the facts of the case where it has been stated by the petitioner that she had sold the truck to Tulsi Sao, she, in that event, is not expected to be concerned with the vehicle but Tulsi Sao who, in the circumstances, can be said to be the agent must be concerned with the vehicle in question. But nothing has come on the record that under his knowledge or connivance, the offence has been committed by the driver. Therefore, the matter needs to be examined afresh by the confiscating officer in terms of Sub-section (5) of Section 52 of the Indian Forest Act.

17. For the reason aforesaid, this writ application is allowed and the impugned orders passed by the respondents-authorities as contained in Annexures 3, 4 and 5 are set aside. In the circumstances, as stated above, the matter is remitted back to the Divisional Forest Officer-cum-Confiscating Officer, Hazaribagh for passing a fresh order in the light of the observation made hereinabove.