

(2002) 09 OHC CK 0041
In the Orissa High Court
Case No : O.J.C. No. 6465 of 2002

Mrs. Sailabala Beck and Others

APPELLANT

Vs

The Authorised Officer-cum-Assistant Conservator of Forest
and Others

RESPONDENT

Date of Decision : 30-09-2002

Acts Referred:

Orissa Forest Act, 1972 — Section 56(2)

Orissa Timber and Other Forest Produce Transit Rules, 1980 — Rule 12, 4, 5

Citation : (2003) 95 CLT 261

Hon'ble Judges : R.K. Patra, J; Pradip Mohanty, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R. K. Patra, J.—Heard Shri Udgata for the Petitioners and the learned Additional Government Advocate for the opposite parties.

2. On 21.1.2001 Maruti Van bearing registration number Or-05-D-2600 was intercepted by the Forest Officials at Padampur Chhak. It was found that the vehicle was carrying hand-sawn sizes of Piasal, Gambhar and Asan (38 pieces i.e. 20.94 cft). The driver of the vehicle was arrested along with the timber. Confiscation proceeding was taken up by the Authorised Officer who after giving due opportunity to all concerned passed an order on 14.9.2001 directing confiscation of the vehicle. He held that there was illegal transportation of timber without any valid document which is in violation of Rules, 4, 5 and 12 of the O.T.T. Rules, 1980. He also held that the involvement of the driver of commission of the forest offence has been proved. Considering the statements of the owner of the vehicle and others, he held that it cannot be ruled out that the forest offence had been committed with the knowledge of the owner or her brother who had not taken sufficient precaution against involvement of the vehicle in commission of forest offence. The owner preferred appeal before the learned District Judge who by order dated 11.1.2002 dismissed the appeal. Hence this

writ petition by the owner of the vehicle.

3. On perusal of the order of the learned District Judge, we are satisfied that he has taken into consideration all the evidence on record and concurred with the findings recorded by the Authorised Officer. The findings recorded by the Authorised Officer confirmed in appeal are based on pure appreciation of evidence and, therefore, this Court in its writ jurisdiction cannot up-set the same.

4. Shri Udgata, however, contended that a Bench of this Court in *Gurudev Singh Rai v. Authorised Officer-cum-Assistant Conservator of Forests*, AIR 1992 Orissa 287 held that in a given case fine can be imposed in lieu of confiscation of the vehicle by taking into account the price of the timber illegally transported, Learned Additional Government Advocate submitted that against the said decision, the State has filed Civil Appeal No. 43 of 1993 in the Supreme Court and stay of operation of the order has been granted.

5. It now appears that the aforesaid Civil Appeal No. 43 of 1993 has been dismissed by the Supreme Court for non-prosecution of the appeal. The order reads as follows :

"Earlier Shri P. N. Misra, advocate, was representing the appellant. Subsequently, Shri Misra was designated as senior counsel. Under such circumstances, a notice was sent by the Registry to the appellant herein to make alternative arrangement. The notice was served on 14.9.1998 but none has put in appearance on behalf of the appellant. Under these circumstances, this appeal is dismissed for non-prosecution."

6. In view of the aforesaid and having regard to the facts and circumstances, we are inclined to hold that ends of justice would be met if fine of Rs. 20,000/- (Rupees twenty thousand) is imposed in lieu of confiscation of the vehicle, if the petitioner deposits the aforesaid amount by 31st of October, 2002, the Authorised Officer will release the vehicle.

7. We have fixed this amount of Rs. 20,000/- keeping in view the price of the seized articles which may come around Rs. 10,000/- and since it is a question of imposing fine, the price, therefore, should be doubled so that in future the petitioner would not indulge in commission of any such forest offence and would be a lesson to others. The order of confiscation is thus modified.

8. With the aforesaid observation and direction, the writ petition is dismissed.

Pradip Mohanty, J.

9. I agree.