
(2006) 02 JH CK 0057

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5550 of 2005

Mukteshwar Mahto

APPELLANT

Vs

Ram Autar Sharma

RESPONDENT

Date of Decision : 07-02-2006

Acts Referred:

Constitution of India, 1950 — Article 14
Forest Act, 1927 — Section 41, 42

Citation : (2006) 3 JCR 468

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : S.P. Sinha, for the Appellant; Rabindra Prasad, J.C. to Sr. S.C. II, for the Respondent

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—The petitioner is permitted to make necessary correction in the writ petition.

2. In this writ application, the petitioner has prayed for quashing the impugned order dated 27.03.2004 passed in Confiscation Case No. 30 of 2003, by . the Divisional Forest Officer, Dhanbad and the order dated 25.07.2005 passed by the Collector, Dhanbad in Confiscation (Forest) Appeal No. 8 of 2004 and also for release of the tractor No. JH 11A 8538 and trailer No. JH 11A 8539 after proper verification of the petitioner's ownership.

3. The petitioner's case is that he is the owner of the said tractor and trailer which is a commercial vehicle mainly used for carrying/transporting agricultural goods. It has been stated that on 17.11.2003 the tractor was loaded with some papal tree chiran and was seized by the forest officials. Thereafter, the said case was initiated for carrying forest produce. Show cause notice was issued to the petitioner to which he had filed reply stating, inter alia, that the vehicle was hired by one Arjun Mahto of Village Khamardih who had loaded the said pieces of papal tree which was removed from his raiyati land. It was" further stated that he had

no knowledge as to whether the said Arjun Mahto had taken permission to remove the said trees from the raiyati land. Evidences were led, but nothing could be brought on record to show that the petitioner had any knowledge that the said goods were illegal and there was valid permit for the same, it was an admitted fact that the tree was removed from the ruiyati land by Arjun Mahto and he had hired the said tractor. The Divisional Forest Officer, without considering the same and without any legal basis, held that the petitioner has violated the provisions of Indian Forest Act and erroneously passed the order of confiscation of the vehicle and the articles loaded thereon. The petitioner, thereafter, preferred appeal before the Collector, Dhanbad, who, by the impugned order dated 25.07.2005, as contained in Annexure 2/b, dismissed the appeal and upheld the order of the Divisional Forest Officer, Dhanbad without application of mind.

4. The grievance of the petitioner is that the Divisional Forest Officer as well as the Collector acted arbitrarily and illegally and have wrongly held the petitioner's vehicle liable for the consequences of violating the law. Learned Counsel for the petitioner urged that since there is no allegation of involvement of the petitioner, confiscation of his vehicle has no justification. He placed reliance on a decision in Laxman Kisan Mundhe and others Vs. The Conservator of Forest, Thane and others, , wherein it has been held by the Bombay High Court that where there is no direct involvement of truck owner in commission of offence knowledge cannot be attributed to him and the order of confiscation is not justified.

5. Learned Counsel appearing on behalf of the respondents, on the other hand, submitted that though the tree was removed from the raiyati land, yet the owner of the truck has not obtained a valid permit and as such, there is violation of the provisions of Sections 41 and 42 of the Indian Forest Act and as such, the impugned orders of the authorities are legal and valid.

6. After hearing the parties and considering the facts and the materials on record as well as the submissions made by the learned Counsel for the parties, I find that the petitioner's vehicle is a commercial vehicle and the same was hired for transportation of the pieces of papal trees which was, admittedly, removed from the raiyati land of Arjun Mahto. There is no evidence on record to show that the petitioner or his driver had any knowledge that the said Arjun Mahto, the owner, had not obtained the required permit. On the facts and the materials available on record, it cannot be said that the petitioner had knowledge about any illegality or irregularity or had any connivance. The orders of the Divisional Forest Officer, as well as the order of the Collector the appellate authority-are based on conjectures and there is nothing on record to justify the same. Both the orders are mechanical, arbitrary and is violative of Article 14 of The Constitution of India.

7. In view of the above, this writ petition is allowed. The impugned order dated 27.03.2004 passed by the Divisional Forest Officer and the order dated 25.07.2005 passed by the Collector, Dhanbad are quashed. The concerned respondent shall release the petitioner's vehicle forthwith on due verification.