
(2010) 01 JH CK 0150
In the Jharkhand High Court

Naresh Mohan Singh @ Naresh Singh and Laxami Devi	APPELLANT
Vs	
The State of Jharkhand and Others	RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Forest Act, 1927 — Section 52

Citation : (2010) 01 JH CK 0150

Hon'ble Judges : Dabbiru Ganeshrao Patnaik, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.G.R. Patnaik, J.—Heard the learned Counsel for the parties.

2. Challenge in this writ petition is to the order dated 4.11.2003 (Annexure-5) passed by the respondent No. 3 in Confiscation Case No. 40 of 1995, whereby, Tractor bearing Registration No. BR 23F 1337 and Tractor bearing Registration No. Brr23F 1338 have been confiscated.

3. Earlier, being aggrieved with a similar order of confiscation, the petitioners had approached this Court by filing a writ petition vide C.W.J.C. No. 2718 of 2000 (R). By order dated 26.2.2002, the writ petition was disposed of by this Court remanding the matter to the concerned authority with a direction to reconsider and pass a fresh order, in the light of the observations made in the order and also in the light of provisions of law.

4. In purported compliance of the direction contained in the order of this Court, the confiscating authority has passed a fresh order which is impugned in the present writ petition.

5. Assailing the impugned order, learned Counsel for the petitioners submits that the impugned order suffers from the same infirmities and illegalities which was not only highlighted by this Court in its order passed in the previous writ petition, but was also deprecated. Learned Counsel explains that by the order passed in

the earlier writ petition, this Court had observed by reference to the provisions of Section 52 of the Indian Forest Act as amended by the Bihar Amendment Act 9 of 1990, that no order of confiscation under Sub-section 3 of Section 52 of the Act can be made if the use of vehicles was without the knowledge of the owner thereof for the purpose of committing any forest offence. A finding has to be recorded therefore by the confiscating authority, after appreciating the evidence, that the owners of such vehicles had the knowledge that the vehicle was likely to be used for carrying the forest produce in contravention of the provisions of the Act.

Learned Counsel adds further that in spite of the observations and directions given by this Court in the order passed in the earlier writ petition, the respondent-confiscating authority had merely repeated the same grounds for confirming the order of confiscation of the vehicles belonging to the petitioners. The confiscating authority has not assigned or recorded any cogent reason for drawing the inference that the petitioners being the owners of the vehicles, had the knowledge about the offence and that with such knowledge had allowed the vehicles to be used for carrying the forest produce.

6. In the counter affidavit, the stand taken by the respondents is that in compliance with the directions contained in the order passed in the earlier writ petition in respect of the confiscation made, the respondents-confiscating authority had acted in accordance with the provisions of Section 52 of the Indian Forest Act as would be evident from the order passed by the authorized officer and the appellate authority as well as by the revisional authority.

7. Counsel for the respondents explains that from the admitted facts, the tractor and the trailer were intercepted by the forest officials while it was found carrying and transporting Sal woods which were found to be forest produce. Such transportation was being made by the use of the vehicles without obtaining prior transit permit under the Forest Rules. The vehicles were therefore seized by the forest officials and the confiscation proceeding was initiated.

Learned Counsel further submits that the fact that the petitioners being the owners of the vehicle, had allowed the vehicles for transporting Sal wood with prior knowledge of such use, leads to the conclusive inference that the petitioners had knowledge that the vehicles would be used for illegal transportation of forest wood.

8. Having heard the learned Counsel for the parties and having gone through the documents on record, I find that as per the admitted facts, the tractor and the trailer belonging to the petitioners were seized when it was intercepted while carrying bags of Sal wood. In the confiscation proceeding, evidences were adduced by the prosecution, on the basis of which inference was drawn that the seized Sal woods pertained to the trees which were felled from within protected area of the forest. Learned Counsel for the petitioner informs that after the matter was remanded to the confiscating authority, for reconsideration and for

passing a fresh order, the concerned authority had only directed that the petitioners should file their show cause replies, but had not given any opportunity to them to adduce evidence in support of their claim of innocence.

9. On perusal of the impugned order, I find that the above submissions of the learned Counsel for the petitioners is not without substance. It appears that the impugned order has been passed only on the basis of the show cause replies filed by the petitioners and by refusing to accept the main defence by the petitioners as mentioned in the show cause replies. The inference that the petitioners had prior knowledge about the illegal use of their vehicles, appears to have been drawn on the basis of conjecture and surmises. In the light of the specific grounds of defence taken by the petitioners, and after the matter was remanded for recording a fresh order after considering the evidences on record, it was obligatory on the part of the confiscating authority to offer opportunity to the petitioners to adduce evidences in support of the grounds taken by them in their defence as per the provisions of Section 52(3) of the Indian Forest Act. Apparently, the petitioners have not been offered a reasonable opportunity of defending their case against the proposed confiscation of their vehicles. The contents of the impugned order are virtually repetition of the contents which were recorded in the earlier order of confiscation which order was set aside by this Court in the earlier writ petition.

10. In the light of the above discussions and in the facts and circumstances of the case, I find merit in this writ petition. Accordingly, this writ petition is allowed. The impugned order of confiscation dated 4.11.2003 (Annexure-5) passed by the respondent No. 3 in Confiscation Case No. 40 of 1995 is hereby set aside. The concerned authorities of the respondents are directed to release forthwith the tractor bearing Registration No. BR 23F 1337 and the tractor bearing Registration No. BR 23F 1338 to the petitioners after proper verification of the documents of ownership.

11. Let a copy of this order/judgment be given to the counsel for the respondents.