

(2001) 05 SHI CK 0020
In the High Court Of Himachal Pradesh
Case No : Criminal W.R.P. No. 3 of 2001

Partap Chand Goyal

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 18-05-2001

Acts Referred:

Forest Act, 1927 — Section 41, 42, 52, 52(2), 52A
Penal Code, 1860 (IPC) — Section 379, 411

Citation : (2001) 2 ShimLC 370

Hon'ble Judges : C.K. Thakker, C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : Ashok Sood, for the Appellant; M.L. Chauhan, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

C.K. Thakker, C.J.—This petition is filed by the Petitioner for quashing and setting aside an order passed by the learned Sessions Judge, Kinnaur Session Division at Rampur Bushahr on 20th February, 2001 in Criminal Appeal No. 12 of 2000. By the said order, the learned Sessions Judge quashed and set aside the order passed by the Authorised Officer, Ani on 25th August, 2000 in case No. 12 of 2000.

2. The case of the prosecution was that on 14th June, 2000, one Gautam Chand, Head Constable of Police Station, Ani was on routine patrol duty. He was present at Shamsheer within the jurisdiction of Police Station, Ani. He noticed a truck bearing No. HP-35-0597 coming from Gugra going towards Ani. Shadi Ram was driving the truck and Bansi Ram was the conductor. The truck was stopped by the police. It was found that it was carrying 27 scants of Deodar. On being asked, neither the driver nor the conductor could produce any transit pass or export permit of the forest produce. The police had, therefore, impounded the truck along with forest produce and a report to that effect was submitted by Gautam Chand, Head Constable, which was registered as FIR 34 of 2000 for offences

punishable under Sections 41 and 42 of the Indian Forest Act, 1927 (hereinafter referred to as 'the Act') read with Sections 379 and 411 of the Indian Penal Code. The offence had been registered against the driver and the conductor. After usual investigation, the police filed charge sheet against the truck driver and conductor in the competent Court of Sub Divisional Judicial Magistrate, Anil. The present Petitioner Pratap Chand Goyal was the registered owner of the vehicle. He, therefore, applied to the Court of Sub Divisional Judicial Magistrate for release of truck. The application of the present Petitioner, however, was rejected by the learned Magistrate by an order dated 27th June, 2000 on the ground that since the offence is alleged to have been committed under Sections 52 and 52A of the Act, it was to be dealt with by the Authorised Officer and the Court of the learned Magistrate had no jurisdiction to entertain the application.

3. In view of the fact that the application was rejected by the learned Magistrate on the ground that he had no jurisdiction and only the Authorised Officer could deal with the prayer made by the Petitioner, the Petitioner made an application to the Authorised Officer- cum-Divisional Forest Officer, Anil at Lohri, which was registered as Case No. 12 of 2000. The Authorised Officer issued notice to the State and after hearing the parties, by an order dated 25th August, 2000, directed the release of vehicle on certain terms and conditions mentioned in the said order. The operative portion of the said order reads as under:

Keeping in view the above, the vehicle No. HP-35-0597, is ordered to be released on Sapurdari on surety bond for Rs. 5,00,000 (rupees five lacs) only, with the following conditions:

(i) That the owner will not change the colour of the vehicle No. HP-35-0597 till the completion of the trial of the case.

(ii) Owner is duty bound to keep the vehicle No. HP-35-0597 safe and in good condition.

(iii) The owner is also duty bound to produce the vehicle No. HP-35-0597 from time to time before the court, whenever required by the Court during trial.

(iv) Owner shall not effect major changes in the said vehicle No. HP-35-0597.

Release order be issued after meeting out the Sapurdari and surety formalities in the name of S.H.O., Police Station, Anil. The vehicle be released with its documents along with key after obtaining proper receipt and identification.

4. Being aggrieved by the said order, the Station House Officer, Anil preferred an appeal under sub-section (2) of Section 59 of the Act. It was inter alia, contended before the learned Sessions Judge that the Authorised Officer had no power, authority or jurisdiction to deal with the application filed by the registered owner nor he could have released the vehicle. A grievance was also made that even if Authorised Officer had jurisdiction in the matter, he ought not to have exercised the power when the vehicle in question was involved in forest offence and to connect the accused with the crime, the vehicle ought to have been

allowed to remain with the prosecuting agency. It was also argued that the Authorised Officer has committed glaring error of law in invoking and importing principles of natural justice. The case did not relate to confiscation but to seizure and at that stage, principles of natural justice had no play. It was only in confiscation proceedings that an opportunity should be given to the person likely to be affected by such confiscation. On all these grounds, the order was liable to be set aside.

5. The learned Sessions Judge, after hearing the parties, held that the order passed by the Authorised Officer was improper, illegal, unlawful and liable to be set aside. According to the learned Sessions Judge, once the vehicle was seized and a case in connection with the commission of offence punishable under the Act was registered, the Authorised Officer had no jurisdiction in the matter. He also held that the principles of natural justice and fair play were required to be followed in case of confiscation of vehicle and not in case of seizure. Accordingly, the appeal filed by the Station House Officer, Ani was allowed, the order passed by the Authorised Officer was set aside and the police was directed to take back the truck from the possession of the owner. It is the said order, which is challenged in the present petition.

6. We have heard the learned Counsel for the parties. It was submitted by Mr. Sood, learned Counsel for the Petitioner that the learned Sessions Judge had no jurisdiction to entertain the appeal and decide it on merits. Once the order was passed by the Authorised Officer, such order may be right or wrong, but it could not have been made subject matter of appeal u/s 59(2) of the Act. He also submitted that the provisions of the Code of Criminal Procedure, 1973 would not apply and precisely on that ground, an application made by the present Petitioner was rejected by the learned Magistrate. Hence, the only remedy available to the Petitioner was to approach the Authorised Officer which he availed and an order was passed.

7. Mr. Chauhan, learned Deputy Advocate General, on the other hand, supported the order passed by the learned Sessions Judge. He submitted that the Authorised Officer had no jurisdiction in the matter and hence the order passed by him was null and void. It was, therefore, open to the prosecuting agency to file an appeal and the said appeal was rightly entertained and decided by the learned Sessions Judge. He also urged that the Authorised Officer was clearly wrong and the learned Sessions Judge was perfectly justified in observing that the principles of natural justice had no application when an action of seizure was taken. It is only when vehicle is to be confiscated that the legislature had provided for observance of principals of natural justice.

8. On merits, relying upon a decision of the Supreme Court in State of Karnataka Vs. K. Krishnan, Mr. Chauhan submitted that serious view ought to have been taken by the Authorised Officer and no order releasing the vehicle could have been passed during the pendency of proceedings. Since the exercise of power by the Authorised Officer was improper, it was objected by the prosecuting agency.

Mr. Chauhan, therefore, submitted that the order passed by the learned Sessions Judge does not require interference and the petition deserves to be dismissed.

9. Having heard the learned Counsel for the parties, in our view, the petition deserves to be allowed only on the ground that the learned Sessions Judge could not have entertained appeal filed against an order passed by the Authorised Officer. Now, looking to the provisions of the Act, it is clear that Chapter VI deals with control of timber and other forest produce in transit. Section 41 authorises the State Government to make Rules to regulate transit of forest produce. Section 42 makes penal provisions for breach of Rules made u/s 41. Section 52 enables the authority to seize property, which is liable to confiscation. It states that when there is reason to believe that a forest offence had been committed in respect of any forest produce, such produce together with all tools, boats, carts or cattle used in committing any such offence, may be seized by any Forest Officer or Police Officer. It also enjoins every officer seizing property under the said Section to place on such property a mark indicating that the same has been so seized, and make a report of such seizure to the Magistrate having jurisdiction to try the offence.

10. It may, however, be stated that in the State of Himachal Pradesh, there is amendment in the Act and by Himachal Pradesh Act 25 of 1968, for sub-section (2) of Section 52 of the Central Act, sub-sections (2) and (3) were substituted; They provide the procedure when a vehicle is alleged to have been used in the commission of forest offences. Section 52A enables Forest Officers to confiscate a vehicle in certain cases. Section 52-B requires the authorities to issue show cause notice before ordering confiscation u/s 52-A.

11. Now, in the instant case, the vehicle was seized by the Police Officer and FIR was registered for commission of offence punishable under the Act. The proceedings are pending in a competent Court of law. Ordinarily, it is the Magistrate, who has jurisdiction to deal with an application for release of vehicle. But after the vehicle was seized by the Police Officer, it was handed over to Forest Officer. Sub-section (3) of Section 52-A states that every officer (Forest Officer) or Police Officer, as the case may be, seizing such property shall make a report of such seizure; (a) where the offence, on account of which the seizure has been made, is in respect of timber, etc. to the concerned Authorised Officer under sub-section (1) of Section 52-A; and (b) in other cases, to the Magistrate having jurisdiction to try the offence on account of which the seizure is made. Section 52-A lays down procedure for confiscation of vehicle by the Authorised Officer. In the case on hand, after the vehicle was seized by the police, a report was submitted to the Authorised Officer as the offence was in respect of forest produce (timber) and for that reason, when an application was made by the Petitioner to the learned Magistrate for release of vehicle, the same was rejected by him. In our opinion, therefore, the Authorised Officer had jurisdiction to entertain, deal with and decide the application made by the Petitioner and he accordingly decided the matter ordering release of vehicle.

12. Since the order could not be said to have been passed u/s 52-A (confiscation of vehicle), no appeal could have been filed by the Station House Officer, Ani under sub-section (2) of Section 59 of the Act before the learned Sessions Judge. As the appeal was not maintainable, the Sessions Court had no jurisdiction to entertain the appeal. The point is also covered by a decision of the High Court of Madhya Pradesh in *Kailash Chand and Anr. v. State of Madhya Pradesh* AIR 1995 Madhya Pradesh 1.

13. In our opinion, however, the contention of Mr. Chauhan, learned Deputy Advocate General is well founded that there was an error on the part of the Authorised Officer in importing and invoking principles of natural justice. He is also right in urging that ambit and scope of Sections 52 (seizure) and 52-A (confiscation) are entirely different. It is only when a confiscation is to be ordered that the legislature has contemplated issuance of notice, calling for explanation and opportunity of hearing inasmuch as the action could be said to be punitive in nature. An action of seizure is merely preventive and at that stage it is not necessary to afford opportunity of hearing. Mr. Chauhan is further right in relying on a decision of the Supreme Court in *K. Krishnan* and in submitting that ordinarily in such matters, a vehicle should not be released during the pendency of proceedings. But as we have held that the Sessions Court had no jurisdiction in the matter, the order passed by the Authorised Officer could not have been set aside in such appeal. If the Respondents or prosecuting agency is aggrieved by the action taken or order passed by the Authorised Officer, it is open to them to take appropriate proceedings in accordance with law and the order passed by us in the present petition will not come in their way.

It is, however, stated at the Bar that the proceedings are likely to be over in near future. If it is so, obviously, the case will be decided on its own merits. We are dealing with a limited question about the legality or otherwise of the order passed by the learned Sessions Judge and we may not be understood to have expressed any opinion on merits of the matter one way or the other.

For the foregoing reasons, the petition deserves to be allowed and is accordingly allowed and the order passed by the learned Sessions Judge, Kinnaur Sessions Division at Rampur Bushahr in Criminal Appeal No. 12 of 2000 is hereby set aside. No costs.