

(1991) 10 MAD CK 0051

In the Madras High Court

Case No : Criminal Revision Case No. 118 of 1985

P.C. Pocker

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 25-10-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 343

Citation : (1992) CriLJ 3057

Hon'ble Judges : Padmini Jesuddurai, J

Bench : Single Bench

Judgement

Padmini Jesuddurai, J.—This revision has been filed by the owner of a lorry, in which his Driver was found on 15-8-1983 at 4 p.m.

transporting 37 logs of Silver Oak in contravention of the provision of the Forest Act 1882 and the Timber Transit Rules 1968 framed thereunder,

and is directed against the order of confiscation of the vehicle passed by the trial Court under S. 43 of the Act, confirmed in appeal by the Sessions

Court.

2. Accused Panneerselvam was found by P.W. 1 the Assistant Conservator of Forest, Coonoor, to be transporting in lorry bearing registration

No. TNE-3525 belonging to the petitioner herein, 37 logs of Silver Oak in the Kilakombai Kawal - Coonoor road. The accused was tried for

offences under S. 35-A read with S. 35-B of the Tamil Nadu Forest Act (hereinafter referred to as the Act) read with Rule 3(1) and Rule 4.B of

the Tamil Nadu Timber Transit Rules (hereinafter referred to as the Rules). He was convicted and sentenced to undergo imprisonment for a period

of one year and to pay a fine of Rs. 3,000/- in default to undergo imprisonment for a period of 3 months. The lorry used for the commission of the

offence and which was marked as M.O. 1 was ordered to be confiscated. The petitioner filed C.A. 34/84 under S. 343, Cr.P.C., challenging the order of confiscation. The accused also filed an appeal before the Sessions Judge, Uthangamandalam, challenging his conviction. Both the appeals were dismissed. The accused filed a revision in this Court which was also dismissed. The conviction has become final. Aggrieved with the dismissal of C.A. 34/84, the petitioner filed this revision.

3. Thiru Susindran, learned counsel for the petitioner would contend that the petitioner was not an accused in the case and no opportunity had been given to him before his lorry was ordered to be confiscated and this was in violation of principles of natural justice. The learned counsel urged that the reason given by the learned Sessions Judge for dismissing the appeal namely that confiscation of the vehicle was mandatory on a plain reading of S. 43 of the Act, is contrary to the decision of the Division Bench of this Court in *Mam and Company v. Forest Range Officer*, 1967 MLJ 268 and that if the petitioner had been given an opportunity, he would have satisfied the court that the offence was committed by his Driver without his knowledge or connivance. The learned counsel, therefore, submitted that the matter must be remanded to the trial court with a direction to hold an enquiry before passing orders under S. 43 of the Act.

4. While the learned Public Prosecutor did not seriously dispute that principles of natural justice require an opportunity to be given to the owner of a vehicle when he is not an accused in the case, to satisfy the court that the offence had been committed by his employee without his knowledge or connivance, drew the attention of the court to Sections 41, 43 and 45 of the Act, particularly the proviso to S. 45, which requires hearing a person claiming right to any property in respect of which a forest offence has been committed, before ordering confiscation, submitted that in the light of the judgment of the Division Bench referred to by the learned counsel for the petitioner, the matter may be remanded for an enquiry before passing orders under S. 32 of the Act.

5. The question that arises for consideration is whether the order of confiscation of the lorry passed by the trial Court and confirmed in appeal, suffers from any illegality, impropriety or error so as to call for interference by this Court under its revisional jurisdiction.

6. Certain facts relating to the lorry had now been proved and have become final. They cannot be reconvicted or reopened. That the lorry was

used by the accused for commission of the offence of transporting 37 logs of Silver Oak without the necessary permit, punishable under sections

35-A and 35-B of the Act read with Rules 3(1) and 4-B of the Rules has been proved and the finding has become final. The defence of the

accused that the lorry was transporting sand to Mariamman temple in Thoddhurmattam under the trip sheet Ex. D-1 has been found to be false.

The prosecution case that the accused had Ex. P-3 trip sheet in the vehicle at the time of its interception, wherein after the interception, the accused

also had signed and had made a voluntary statement Ex. P-1 admitting the offences have been proved to be true. These facts have become final.

7. The only question that remains to be considered so far as the order under S. 43 is concerned is whether, when the petitioner had not been an

accused in the case, the lorry is liable for confiscation.

Section 43, is as follows :

When any person is convicted of a forest offence all timber or forest produce in respect of which such offence has been committed and all tools,

ropes, chains, boats, vehicles and cattle used in committing such offence, shall be confiscated to the Government.

A plain reading of the above provision would indicate that confiscation is mandatory, once it is established that the vehicle had been used for the

commission of the offence and the accused is convicted. However a Division Bench of this Court in Mam and Company v. Forest Range Officer,

1967 MLJ 268 interpreting the above provision has held that the term "shall" should be read as "may" and that confiscation is not mandatory but is

only discretionary, depending upon facts of each case. The Division Bench had interpreted it thus, in view of the settled law on this matter, that the

term "shall" would have to be interpreted as mandatory, only when interpreting it otherwise, would defeat the very object of the legislation wherein

it occurs. Such is not the case here. Though S. 43, unlike the Tamil Nadu Prohibition Act, which contains the principles to be followed when

deciding whether or not confiscation of vehicles used for the commission of prohibition offences should be ordered is silent, still the Division Bench

felt that the object of the legislature could never have been to make it obligatory

for the court to confiscate a vehicle, even when the offence could have been committed by another without the knowledge or connivance of the owner of the vehicle. In a case where the owner of the vehicle is not an accused, the question whether the vehicle has to be confiscated or not would depend upon the fact whether the offence had been committed without the knowledge or connivance of the owner of the vehicle.

7A. Since the court has to find out whether the offence had been committed either by the employee of the owner or by someone else without the knowledge or connivance of the owner of the vehicle, a separate enquiry, after the conclusion of the trial (sic) for the purpose of S. 43 of the Act.

In such an enquiry, notice must be given to the owner of the vehicle. An opportunity must be given to him and the State to produce evidence, oral

and documentary and on a consideration of the entire material, the court will have to give a finding as to whether the offence was committed

without the knowledge or connivance of the owner of the vehicle. Passing an order of confiscation without holding such an enquiry and without

giving an opportunity to the owner of the vehicle to satisfy the court and he had no knowledge of the offence and it was committed without his

connivance, will be contrary to principles of natural justice. It is made clear that a separate enquiry has to be held only when the owner of the

vehicle had not been an accused during trial.

8. The scope of the enquiry, however, will be limited. The court cannot permit the parties to receive the issue as to whether or not the vehicle had

been used for the commission of the offence. In such an enquiry, the court is bound by the findings already rendered by it in the trial of the accused.

Orders of confiscation are generally consequential orders, flowing from the findings rendered during the trial. A separate enquiry has become

necessary only in the peculiar circumstance of one person committing an offence using the vehicle of another person, which vehicle by virtue of such

user becomes liable for confiscation. The findings of the trial court, that the vehicle had been used for the commission of the offence in the exact

manner as found by the courts during the trial of the accused cannot be reopened and the enquiry will be limited only to the question of finding out

whether the offence was committed without the knowledge or connivance of the owner of the vehicle.

9. When a vehicle is used by someone other than the owner, there is no presumption that he is using it without the knowledge of the owner. It is, therefore, for the owner of the vehicle to prove that the offence was committed without his knowledge or connivance. Knowledge being a mental state cannot be proved by direct evidence. It has to be inferred from a totality of circumstances. During the trial this aspect of the owner's knowledge or connivance would not normally come into the picture since the owner was not an accused. The owner of the vehicle which had been used to commit forest offences would very rarely be in the vehicle at the time when the vehicle is found being used for the commission of the crime. The only persons who would be in the vehicle at such a time would be the driver, the cleaner and workers, whose services would be required to load or unload. Merely from the absence of the owner, it could not be inferred that the owner had no knowledge that his vehicle was being used for the commission of the offence. Invariably, it is the owner of the vehicle, who gets the major share of the fruits of the crime, the driver, the cleaner and the workers being paid only wages for their usual service. The tendency of the owners of the vehicles to plead ignorance, disown the driver, the cleaner, and the workers in an attempt to save the vehicle from confiscation, should never be lost sight of by the courts. While the courts in a proceeding such as this would have to ensure that confiscation of the vehicle of an innocent owner is not ordered, courts should also bestow their anxious consideration to see that the person who really get the benefit of the crimes do not escape these penal provisions relating to confiscation, by the courts treating these matter lightly. Courts have to bear in mind that the legislation is intended to preserve the forests in the interests of the nation as a whole. The vastness of the area, the difficulty of detection of forest crimes, the risks involved in the detection, render enforcement of the legislation difficult. When 37 logs of Silver Oak are found illicitly transported, courts should be aware that there should be a net work of persons who should have felled these trees, sized them, seasoned them and made them available for transport and all these continue illegal activities to be done, since heavy vehicles are easily available to transport them from out of the forest area. Such kind of transport would not normally be done by a driver or a cleaner of a vehicle acting by himself. Courts, therefore, have to consider the circumstances under which the

vehicle was found carrying forest timber, the quantity of the forest produce carried, the statement made by the driver immediately to the Forest

Official, the conduct of the owners of the vehicle and so on. In cases where the circumstances indicate that the offence would not have been

committed without the knowledge or connivance of the owner of the vehicle, courts should never hesitate to order confiscation of the vehicles on

irrelevant considerations such as the value of the vehicle, the loss to the owner and so on. These will be the broad guidelines which courts have to

bear in mind, while passing orders under S. 43 of the Act.

10. In *State by Public Prosecutor v. Chellandurai* 1986 MLW 39, this Court confirmed the order of confiscation of the Ambassador Car, in which

teakwood pieces cut from forest area were being transported, even though the accused were acquitted on the question of identity.

11. In the result, the revision is allowed. The order of confiscation is set aside and the matter is remanded to the court of the Judicial Magistrate,

Coonoor for holding an enquiry under S. 43 of the Act and pass suitable orders on the basis of the guidelines provided above.

12. Petition allowed.