
(1993) 03 CAL CK 0059
In the Calcutta High Court
Case No : Criminal Rev. No. 25 of 1993

Pijush Kanti Mondal

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 24-03-1993

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401, 402, 482
Forest Act, 1927 — Section 52, 59A, 59B, 62, 63

Citation : (1993) 2 CALLT 252 : 97 CWN 875

Hon'ble Judges : Gitesh Ranjan Bhattacharjee, J

Bench : Single Bench

Advocate : Himansu De, A. Jana and Biswadip Nandy, for the Appellant; Alakananda Basu, for the Respondent

Judgement

G.R. Bhattacharjee, J.—This revisional application is directed against the order dated the 7th November, 1992 passed in Misc. Appeal No. 10 of 1991 by the learned Additional District Judge, Second Court, Jalpaiguri affirming the order of confiscation of the seized truck bearing No. WGV 5456 passed by the Authorised Officer, Jalpaiguri district and Divisional Forest Officers, Jalpaiguri division u/s 59-A of the Indian Forest Act, 1972 as amended by the West Bengal Act XXII, 1988.

2. On 12th April, 1989 while patrolling on highways and roads the forest officials found that timber was being unloaded from the said truck which was standing in the Bazar area of Dowkimari village. On seeing the forest officials the unknown persons who were unloading timber from the said truck fled away leaving the truck and the timber behind. The forest officials found that one log of Chilauni was still lying in the truck and large quantity of timber was lying in heaps behind the truck. Jogans (used for loading and unloading purposes) were also found at the spot. All those things including the truck were seized by the forest officials. Subsequently, the present petitioner, Pijush Kanti Mondal filed a petition to the Range Officer claiming the seized truck as his own. One Shri Dharendra Chandra Sarkar also filed a petition to the said Range Officer claiming the seized jogans

and stating that the jogans were taken from him by the labourers of the truck seized at the spot. However nobody claimed the seized timber. A total of 60 logs of different kinds including Chilauni, Chikrassi etc. were seized along with the truck. Although initially the petitioner Pijush Kanti claimed to be the registered owner of the seized vehicle, subsequently however he changed his version and divulged that one Bimal Chandra Kar and one Sukumal Kar were the registered owners of the truck and he looked after the said truck. Subsequently however a power of attorney in respect of the truck was executed by Bimal Chandra Kar and Sukumal Kar in favour of Pijush Kanti Mondal and it was projected that the vehicle was sold by them to Pijush Mondal about 8/9 months before its seizure and it was being used by Pijush Mondal for hire and commercial purposes and the income from the vehicle was being utilised by Pijush Mondal himself and the vehicle was not under the control of the Kars in any way. Bimal Kar also stated before the Authorised Officer that he had no objection if the vehicle was confiscated. On considering the evidence and the materials on record both the Authorised Officer and Appellate Court (the Additional District Judge) found that the vehicle in question carried without proper authority forest produce obtained by illicit means. Sitting in the revisional jurisdiction I find no valid reason to interfere with the finding of facts arrived at by the Authorised Officer and confirmed by the Appellate Court.

3. Sub-section (3) of Section 59-A, which section has been inserted by the West Bengal Amendment Act in the Indian Forest Act runs thus :

"(3) Where any timber or other forest-produce which is the property of the State Government is produced before an authorised officer under Sub-section (1) and the authorised officer is satisfied that a forest offence has been committed in respect of such property, he may, whether or not a prosecution is instituted for the commission of such offence, order confiscation of the property together with all tools, ropes, chains, boats, vehicles and cattle used in committing the offence".

4. The word "may" in the said Sub-section indicates that it is a matter of discretion of the authorised officer as to whether an order of confiscation is to be passed in the particular facts and circumstances of a case coming within the ambit of the said Sub-section. Sub-section (2) of Section 59-B inserted by the West Bengal Amendment Act however provides that without prejudice to the provisions of Sub-section (1), no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made u/s 59-A if the owner thereof proves to the satisfaction of the authorised officer that such tool, rope, chain, boat, vehicle or cattle was used in carrying the timber or other forest produce without the knowledge or connivance of the owner himself or his agent, if any, or the person-in-charge thereof and that each of them had taken all reasonable and necessary precautions against such use. Sub-section (3) of Section 59-A read with Sub-section (2) of Section 59-B makes it clear that when a forest offence has been committed in respect of any forest produce which is the property of the State

Government any tool, rope, chain, boat, vehicle or cattle used in committing the offence will be liable to confiscation at the discretion of the authorised officer but no such confiscation shall be ordered where the owner of such tool, rope, chain, boat, vehicle or cattle used in carrying the timber or other forest produce proves to the satisfaction of the authorised officer that the same was so used without the knowledge or connivance of the owner himself or his agent, if any, or the person-in-charge thereof and that each of them had taken all reasonable and necessary precautions against such use. The onus is squarely upon the owner to prove that he or his agent or the person-in-charge thereof had no knowledge or connivance in the matter of such use and also to prove that each of them had taken all reasonable and necessary precautions against such-use. In the present case it is specifically noted by the authorised officer in his order that both the registered owner of the vehicle and the custodian of the vehicle who acted as his agent are totally silent on the aspect of the precautions taken by them to prevent the use of their vehicle in the commission of the forest offence. The authorised officer recorded his specific finding that the registered owner of the vehicle or its custodian agent or the person-in-charge thereof had failed to prove to his satisfaction that they had taken all necessary and reasonable precautions against use of the vehicle for commission of an offence. The learned Additional District Judge did not disturb that finding of the authorised officer. I also do not find any reason, in view of the materials on record, to interfere with any of the findings of the authorised officer or of the Additional District Judge who heard the appeal. That being so, the protection of Sub-section (2) of Section 59-B against confiscation of the concerned vehicle is not available in the present case.

5. The evidence on record shows that at the time of seizure one Chilauni log was found lying on the truck. It is also in evidence that many logs were found lying behind the truck. There is evidence to the effect that Chilauni and Chikrassi grow in the forest and these species are not found in the private land in that area. The authorised officer has also noted that the fact that logs of Chilauni and Chikrassi variety were found at the site of seizure clearly indicated that these were transported there from elsewhere and this was borne out by the fact that they were in the process of being unloaded at the time of detection. It is also very significant that none came forward to claim the ownership or pray for return of the seized logs. It is also in evidence that the Jogans (used for loading and unloading) were brought in that morning by the labourers of the truck from one Dhirendra Chandra Sarkar who is a resident of the locality which fact lends support to the testimony of the forest officials that at the time of detection the labourers were unloading logs from the truck. There is therefore no scope of interfering with the findings that forest produce obtained by illicit means was carried in the concerned truck and was being unloaded from the truck at the time of detection and as a matter of fact one Chilauni log was still lying inside the truck when the labourers on seeing the forest officials fled away from the place leaving the unloaded logs heaped in the immediate neighbourhood of the truck. The owners or for that matter the custodian of the truck failed to prove that they

took all necessary and reasonable precautions against illegal use of the truck in the commission of offence as envisaged u/s 59-A of the Indian Forest Act. It is also in evidence that the house of the petitioner is very near the place from where the truck and logs were seized and the authorised officer for reasons recorded by him has held that such incident could not have happened without the knowledge, connivance or involvement of the petitioner.

6. The learned Advocate for the petitioner attracted my attention to the Division Bench decision of the Orissa High Court in *Gurudev Singh Rai Vs. Authorised Officer-cum-Asst. Conservator of Forests and Another*, in support of his argument that in certain circumstances, having regard to the value of the forest produce, in respect of which the offence has been committed, it may be a gross injustice to confiscate the truck of a much higher value to the detriment of the interest of the owner of the truck and in such situation the authorised officer should be deemed to have power to impose fine on the owner in lieu of confiscation of the vehicle although there is no such express provision to that effect in the Act. In the said decision of the Orissa High Court Section 56(2-a) of the Orissa Forest Act, 1972 fell for consideration. The said section permits confiscation alone, on the authorised officer being satisfied that a forest offence has been committed. The section however does not speak of imposition of fine as a substitute for confiscation. Of course that section has conferred a discretion in the matter, which would appear from the use of word "may" in this connection. The Orissa High Court in the said decision however felt that inspite of the absence of any specific provision authorising the authorised officer to impose fine in lieu of confiscation such a power may be judicially engrafted in the said section so that in a fit case fine may be imposed in lieu of confiscation. The Court on consideration of the views of different high authorities including several decisions of the Supreme Court of India [viz. *M. Pentiah and Others Vs. Muddala Veeramallappa and Others*, , *Hameedia Hardware Stores*, represented by its partner *S. Peer Mohammed Vs. B. Mohan Lal Sowcar, K. Venaswami v. Union of India* (1991) supp 3 SCC 656] was convinced that it was not beyond the competence of the High Court to read words in a statute which are not there. The Court then proceeded to examine whether the exercise of that power to read words which are not there was warranted in connection with the provisions contained in Section 56(2-a) of the Orissa Forest Act and made the following observation in paragraph 15 of the said decision in *Gurudev Singh Rai v. Authorised Officer* (supra) ;

"We have given our deep thought to this aspect of the matter. Here is a statute which in its Section 56(2-a) has visualised confiscation alone as the punishment to be awarded against persons like owner of a vehicle which had been used in the commission of a forest offence. Not only this, the power of ordering confiscation has been made discretionary, which would show that in appropriate cases only, confiscation should be ordered and that in the facts of a particular case, confiscation may not be ordered. But beyond these two choices, the section has not provided for any other punishment to be imposed on the owner of the

vehicle. It may, however, well be that in a particular case the authority may not feel satisfied that confiscation of the vehicle is demanded keeping, inter alia, in view the magnitude of the offence. Say, where a forest offence committed relates to a forest produce whose total value though not nominal is also not on the higher side to merit confiscation of a vehicle valued many times more than the value of the produce in question. It may also be that the owner though legally vicariously liable for the acts of his driver which would permit confiscation yet the facts may be such as may not demand confiscation of the highly valued property but the authority may also feel that some sort of punishment deserves to be inflicted on the owner. To take care of these and similar other situations, the Court may generally feel that a lacuna has been left in the statute which must be supplied to implement the real intention of the legislature. When such a defect comes to the knowledge of a Judge, he is not required to simply fold his hands and blame the draftsman, he has to supplement written words in such a situation by asking the question as to how the legislature would have acted had it known about the defect in question and then do what the legislature would have done according to the Judge."

7. Then again in paragraph 17 of the said decision (supra) the Court made the following observation :

"Having deeply reflected over the question at hand, we are of the firm view that if the deficiency in Section 56(2-a), of which reference has been made above, would have come to the knowledge of the legislature, it would have definitely provided for imposition of fine as an alternative punishment in those cases where the authorities may not be satisfied about the desirability of confiscation and may not also feel happy in allowing the owner of the vehicle to go scot-free. We, therefore, read in the aforesaid section a power to impose fine in lieu of confiscation in appropriate cases. What could be the appropriate cases cannot be laid down with rigidity-the same has to be left to the satisfaction of the appropriate authority".

8. From the above observations it is clear that in view of the provisions of the Orissa Forest Act, the Orissa High Court was convinced that, there was a deficiency, caused unwittingly, in Section 56(2-a) and it would be consistent with the legislative intent to supply and read certain words in the said section so as to empower the authorised officer to impose fine in lieu of confiscation in deserving cases. The Orissa Forest Act has not been placed before me. But it may be presumed that in interpreting Section 56(2-a) of the said Act the Orissa High Court was satisfied that there was nothing in the other provisions of the said Act which would be inconsistent with the interpretation offered by the High Court. There is therefore no doubt that the course adopted by the Orissa High Court was justified in the background of the provisions of the Orissa Act as that was found to be consistent with the intention of the legislature. The question which we will have to consider now is whether the provisions of the Indian Forest Act, 1927 as amended by the West Bengal Amendment Act would also sustain or

warrant such a course of supplying and reading words in the concerned provision of the said Act as applicable in West Bengal. Indeed the power of confiscation of a vehicle as given to the authorised officer in Sub-section (3) of Section 59-A of the Indian Forest Act, 1927 as inserted by the West Bengal Amendment Act of 1988 is more or less similar to the power given to the authorised officer u/s 56(2-a) of the Orissa Forest Act as can be gathered from the said decision of the Orissa High Court. Under Sub-section (3) of the said Section 59-A also the authorised officer has a discretion whether or not to order confiscation as is evident from the word "may" appearing therein even when he is satisfied that a forest offence has been committed in respect of any timber or other forest produce which is the property of the State Government and which has been produced before him under Sub-section (1) of Section 59-A, but here also no express power has been given to the authorised officer to impose fine in lieu of confiscation. In the context of the several amendments made in the Indian Forest Act by West Bengal Amendment Act we will however have to gather at the first instance the legislative intent by referring to the different provisions of the Act as amended in West Bengal before we supply and read some words in Sub-section (3) of Section 59-A, by mechanically following the aforesaid decision of the Orissa High Court.

9. Section 52 of the Indian Forest Act empowers forest officers as well as police officers to seize any forest produce in respect of which there is reason to believe that a forest offence has been committed, together with all tools, boats, carts and cattle used in committing any such offence and requires the officer making such seizure to make a report of such seizure to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made, except where the forest produce is the property of Government and the offender is unknown in which case it will be sufficient if the officer making the seizure makes a report of the circumstances to his official superior. The original proviso to the Section 52 has been substituted by the West Bengal Amendment Act by a new proviso which inter alia provides that when an offence falls under the purview of Section 59-A it will not be necessary to make a report of such seizure to the Magistrate. Section 53 of the Indian Forest Act empowers a forest officer of the stated rank to release any tools, boats, carts or cattle seized u/s 52 on the execution by the owner thereof a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made. This original section has however been amended by the West Bengal Amendment Act and vehicle used in connection with the commission of the offence also has been brought within the ambit of the said section, but at the same time an exception has been added to this section by providing that in respect of offences falling u/s 59-A the procedure laid down in that section shall be followed. It is therefore evident that the legislature by amendment has taken away the general power given by Section 53 to release a vehicle or other things mentioned in the said section on bond in respect of cases coming within the ambit of Section 59-A. The legislative

intent, so far as West Bengal is concerned, is therefore clear that in respect of offences falling u/s 59-A the general power conferred on an officer of the stated rank u/s 53 to release the concerned property, which may include vehicle, on execution of bond by the owner will not be available.

10. Section 68 relates to power to compound offences and provides that the State Government may empower a forest officer to accept a sum of money by way of compensation for any forest offence other than an offence specified in Section 62 or Section 63 which the person concerned is suspected to have committed and also to release the seized property where such property was seized as liable to confiscation, on payment of the value thereof as estimated by such officer. On payment of such sum of money or such value or both as the case may be, the suspected person is required to be discharged and the seized property is also required to be released and in that case no further proceedings can be taken against such person or property. This power to compound offences u/s 68 has however been subjected to very substantial amendment by two West Bengal Amendment Acts, viz., the West Bengal Amendment Act 14 of 1975 and the West Bengal Amendment Act 21 of 1988. Under the original Sub-section (3) of Section 68 a Forest Officer not below the rank of a Ranger could be empowered to compound an offence but the money accepted as compensation for the offence under Clause (a) of Sub-section (1) could in no case exceed the sum of fifty rupees. The original Sub-section (3) of Section 68 was however substituted by an altogether new Sub-section (3) by the West Bengal Amendment Act of 1975 under which a Forest Officer not below the rank of a Forester can be empowered to compound an offence, but the limit of compensation that can be accepted for the offence was raised to one thousand one hundred and fifty rupees. The amount required to be paid for release of the seized property (which obviously includes seized vehicle also) was also raised to double the market value of the property as estimated by the empowered officer. Then there was further amendment to Section 68 by the West Bengal Amendment Act of 1988 by way of insertion of an altogether new Sub-section (4). Section 68 of the Indian Forest Act, 1927 as it now stands after amendments inserted by the West Bengal Amendment Acts is reproduced below :-

"S. 68. Power to compound offences.

(1) The State Government may, by notification in the Official Gazette, empower a forest officer-

(a) to accept from any person against whom a reasonable suspicion exists that he has committed any forest offence, other than an offence specified in Section 62 or Section 63, a sum of money by way of compensation for the offence which such person is suspected to have committed, and

(b) when any property has been seized as liable to confiscation, to release the same on payment of an amount equivalent to double the market value thereof as

estimated by such officer.

(2) On the payment of such sum of money, or such amount, or both, as the case may be, to such officer, the suspected person, if in custody, shall be discharged, the property, if any, seized shall be released, and no further proceedings shall be taken against such person or property.

(3) A forest officer shall not be empowered under this section unless he is a forest officer of a rank not inferior to that of a Forester, and the sum of money accepted as compensation under Clause (a) of Sub-section (1) shall in no case exceed the sum of one thousand one hundred and fifty rupees.

(4) Notwithstanding anything contained in the foregoing provisions of this section, no forest offence, other than a forest offence u/s 62 or Section 63, shall be compounded by a forest officer if the value of the forest produce seized exceeds five thousand rupees or if a cart or other vehicle has been used in committing the offence".

11. The legislative intent so far as West Bengal is concerned is very clear from Sub-section (4) of Section 68 that the forest officer who may be otherwise empowered u/s 68 to compound a forest offence mentioned therein on receipt of compensation and to release any seized property liable to confiscation on payment of an amount equivalent to double the estimated market value thereof can not exercise the power to compound the offence where the value of the forest produce seized exceeds five thousand rupees or where any cart or vehicle has been used in committing the offence. This also reflects the serious view consciously taken by the legislature, by the latest amendments inserted in the statute, in respect of forest offence where cart or vehicle is used for committing the same so much so that user of cart or vehicle renders the offence non-compoundable for that reason alone. Such seriousness of legislative view is also reflected by the provision that the empowered officer can release the seized property liable to confiscation (which may be a vehicle) on payment of double the estimated market-value thereof, and not for any amount lesser than that. It is however to be noticed that legislature in Sub-section (2) of Section 68 has used the disjunctive word "or" in the expression "on the payment of such sum of money, or such amount, or both, as the case may be" appearing at the beginning of the Sub-section as well as in the concluding words "such person or property". This indicates that the power to compound an offence under Clause (a) of Sub-section (1) of Section 68 and the power to release the seized property on payment of double the estimated market-value under Clause (b) thereof are independent and mutually exclusive powers. That being so even if in any particular case the concerned offence is found to be non-compoundable in view of Sub-section (4) of Section 68 and therefore the power to compound the offence under Clause (a) of Sub-section (1) thereof is not available to the empowered officer, he may yet exercise in such case his power under Clause (b) thereof to release the seized property on payment of double the estimated market value of such property. Now to recapitulate, the power given u/s 53 to a

Forest officer not below certain rank to release any tools, ropes, chains, boats, vehicles or cattle seized u/s 52, on the execution of bond by the owner has been made inapplicable by West Bengal amendment, to cases falling u/s 59-A. u/s 68 an empowered officer can compound an offence on receipt of compensation. He can also release the seized property (including vehicle) which is liable to confiscation, on receipt of money, the quantum of which was originally prescribed as the estimated value of such property which by subsequent amendment was raised to double the market-value of such property as estimated by such officer. By amendment in 1988 the legislature introduced more stringent provisions debarring an empowered officer to compound an offence where a cart or other vehicle has been used in committing the offence. This reflects the legislative anxiety for taking stringent measure where a cart or vehicle is used in committing the offence. With full consciousness of the provision in Section 68 that an empowered officer can release a vehicle-which will have the effect of a final release,-under the said section, only on payment of an amount equivalent to double the estimated market-value of the vehicle, the legislature, far from authorising the empowered officer to release the vehicle for any lesser amount, rather made a stringent provision debarring compounding of an offence where any vehicle is used for committing such offence and at the same time inserted certain new sections including Section 59-A without providing for imposition of fine in lieu of confiscation of vehicle, etc. which seems to be a deliberate legislative omission consistent with the legislative intent in respect of the matter. Therefore the provisions of the Indian Forest Act as amended in West Bengal admit of no scope for supplying or reading any new words in Section 59-A with a view to permitting the concerned authorised officer to impose fine in lieu of confiscation under the said section on the assumption of any legislative intent in that regard inasmuch as the legislative intent as reflected from the West Bengal amendments appears to be rather pronouncedly different. In view of the clear intent and mandate of the legislature as discussed above, there is therefore little scope for inferring, assuming or presuming that there was any accidental or unnoticed deficiency in Section 59-A in the matter of its drafting which, if brought to the notice of the legislature, would have prompted it to enact any provision now missing in the said section empowering the authorised officer to impose fine only in deserving cases in lieu of confiscation of vehicle. The Orissa High Court decision in Gurudeb Singh Rai (supra), therefore does not apply in interpreting Section 59-A of the Indian Forest Act, 1927. Section 59-A will therefore have to be read as it is without adding anything thereto or subtracting anything therefrom. It is however always open to the legislature to reconsider or review the matter in future, but that is entirely a different matter.

12. However the fact that the authorised officer has not the power to impose fine u/s 59-A in lieu of confiscation of vehicle does not however in any way restrict or impair the power of the High Court to pass appropriate order in a fit case u/s 482 Cr.P.C. for securing the ends of justice. The very fact that Section 59-A by its own term, in view of the use of the word "may" therein, gives a discretion to the

authorised officer not to confiscate a vehicle even when the authorised officer is satisfied that a forest offence has been committed in respect of any forest produce which is the property of the State Government and which has been produced before him clearly indicates that an order of confiscation u/s 59-A is not a "must" even when the other conditions of the said section are satisfied. The authorised officer although not empowered to impose a fine u/s 59-A in lieu of confiscation may still choose in view of the exceptional facts and circumstances of any case, not to order confiscation under the said section. The very fact that the exercise of the power of confiscation given in favour of the authorised officer u/s 59-A is rather discretionary and not mandatory leaves ample opportunity for the High Court, in the facts and circumstances of any particular case, to impose fine in lieu of confiscation of a vehicle in exercise of its inherent power u/s 482 Cr.P.C. where the High Court feels it necessary to do so for securing the ends of justice even where the provisions of Section 59-A are attracted and an order of confiscation has been passed by the authorised officer under that section.

13. Having regard to the facts and circumstances, I am however of the opinion that in this case while upholding the orders of confiscation of the seized vehicle passed by the authorised officer, Jalpaiguri district and Divisional Forest Officer, Jalpaiguri division and affirmed by the Appellate Court, the Additional District Judge, 2nd Court, Jalpaiguri, this court in exercise of its inherent power u/s 482 Cr.P.C. may, for securing the ends of justice, give an opportunity to the petitioner to avoid the order of confiscation of the vehicle by depositing fine in lieu thereof. Accordingly I direct that the authorised officer, Jalpaiguri district (Under Section 59-A of the Indian Forest Act) and Divisional Forest Officer, Jalpaiguri division shall release the vehicle to the petitioner, if the petitioner pays a fine of Rs. 1,50,000/- (one lac fifty thousand) within a fortnight from the date of this order failing which the order of confiscation of the vehicle as passed by the authorised officer and affirmed by the Appellate Court shall be given effect. The imposition of this fine, it is made clear, will be in lieu of the order of confiscation of the vehicle, if paid within the period mentioned above. Since this order of fine has been passed in lieu of confiscation of the vehicle the same will have no consequence on any other liability under law. The revisional application stands disposed of.