
(1978) 11 AP CK 0009

In the Andhra Pradesh High Court

Case No : Criminal R.C. No. 271 of 1978 and Criminal R.P. No. 268 of 1978

Ponnolu Lakshmaiah and another

APPELLANT

Vs

The State of A.P.

RESPONDENT

Date of Decision : 15-11-1978

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 133, 144, 297, 435, 439
Essential Commodities Act, 1955 — Section 6C
Evidence Act, 1872 — Section 24

Citation : (1978) 11 AP CK 0009

Hon'ble Judges : Punneyya, J

Bench : Single Bench

Advocate : P. Rama Krishna Raju for the 1st Petitioner and Mr. D. Satyanarayana for the 2nd Petitioner, for the Appellant;

Judgement

Mr. Punneyya, J.—This revision is directed against the judgment passed by the Additional Sessions Judge, Cuddapah in Criminal Appeal No. 25 of 1978 confirming the order passed by the Divisional Forest Range Officer, Cuddapah in Offence No. 174/77-78 dated 27-3-1978 ordering the confiscation of lorry APD; 3005 to the State. The second petitioner is the owner of the lorry APD. 3005. The first petitioner purchased the same from the second petitioner under hire purchase agreement dated 19-11-1977 According to the agreement, the consideration has to be paid by the first petitioner to the second under instalments and the last instalment had to be paid on F9-5-1979. Only one instalment was paid by the first petitioner to the second petitioner after he purchased the same under the agreement dated 19-11-19(sic)7. But before the other instalments were paid, the lorry was involved in a forest offence as the lorry was carrying 440 sandal wood billets and it was caught on 28-12-1977 at about 4 a.m. by the Forest Department authorities when the lorry came from Kodur side and was proceeding towards Cuddapah. In that lorry, A-1 the owner of the sandal-wood billets, A-2 the first petitioner, A-3 the driver and A-4 the cleaner were found travelling at the time of the seizure. The forest Range officer

Seized the 440 sandal-wood billets in the presence of the panchayatdars under a panchanama. He also seized the lorry. The sandal-wood billets did not bear any hammer marks of the Forest Department or were covered by any permit. They were weighed in the presence of the Panchayatdars and the accused and the hammer mark was fixed on each sandal wood billet. 440 sandal wood billets weighed 91-075 Kgs.

P.W. 2, the Assistant Range Officer, recorded the statements of Accused 1 to 4 before the Panchayatdars. He produced the lorry as well as the 440 sandal wood billets before the Divisional Forest Officer, Cuddapah. The Divisional Forest Officer after satisfying himself that a forest offence has been committed in respect of 440 sandal wood billets ordered detention of the lorry APD. 3005 and all the 440 billets of sandal wood in the custody of the Department for dealing with under sub-section (2) of Section 44 as provided by Act No. 17 of 1976. The Divisional Forest Officer issued notice to Accused 1 to 4 under Sub-section 2 (A) and 2 (B) of Section 44 of the Forest Act, 1967. Accused 1 and 2 acknowledged the notices. In the said notices, the reasons for the proposed confiscation of the lorry and the forest produce were given. Accused-1 and 2 were given ten days time from the date of receipt of the notice to show cause as to why the lorry and the forest produce of 440 sandal wood billets should not be confiscated to the State. In the notices given to accused-2, it was also mentioned that he was being given an opportunity of being heard, if he desired so, and if no representation within the specified period was received, and if no request was made for being heard in the matter, it would be presumed that he did not want to make any representation against the proposed confiscation of the lorry. Accused-2 submitted his representation on 3-3-1978 requesting that he might be heard in person. Accordingly, the Divisional Forest Officer, Cuddapah heard accused 2 on 18-3-1978. The Divisional Forest Officer, Cuddapah after considering the evidence of Panchayatdars, the statements of all the four accused recorded by the Assistant Range Officer on 28-12-1977 and also the enquiry conducted by him on 19-1-1978 and 18-3-1978 came to the conclusion that the lorry had been seized while transporting 440 sandal wood billets illicitly. He, therefore, held that the accused committed the offence under Sections 32, 36, 29 (1) read with Section 68 of Andhra Pradesh Forest Act and read with rule 3 of Andhra Pradesh Sandalwood and Red Sanders wood Transit Rules, 1969. He also held that accused-2, who is the owner of the lorry, failed to disprove the use of the lorry APD: 3005 in the illegal transport of 440 sandalwood billets and hence, he held that the lorry had been deliberately and mischievously used by accused-2 and therefore, he ordered for confiscation of the 440 sandal wood billets and also the lorry APD: 3005 used in the commission of the offence,

2. Aggrieved with the said order of confiscation of lorry, accused-2 preferred an appeal before the Sessions Judge, Cuddapah. The learned Sessions Judge made over the appeal to the Additional Sessions Judge for disposal. The learned Additional Sessions Judge took into consideration the material that accused-1 to 4 were actually found in the lorry APD. 3005 transporting illicitly 440 sandalwood

billets in three trunks and two bags, that the said sandal wood billets did not bear any hammer marks of the Forest department, that they were not covered by any permit, that they were seized under a panchanama in the presence of Panchayatdars, that the panchayatdars are all independent witnesses, that the panchanama contained all the above mentioned particulars, that the accused admitted about that illicit transporting of 440 sandal wood billets in the lorry APD. 3005 and the accused made those statements voluntarily but not under any threat or coercion and they are not hit by Section 24 of the Evidence Act, that the accused-2, (who was the appellant before the learned judge) had knowledge of the forest produce being transported illegally without any permit from Kodur to Cuddapah when the lorry was detained and that the Divisional Forest Officer followed the procedure prescribed with regard to issue of novices and also given an opportunity to the accused of being heard and came to the conclusion that the order of confiscation of 440 sandal wood billets and also the lorry APD 3005 used in committing the said offence, is not illegal.

3. Aggrieved with the said order, accused -2 preferred this revision. The original owner of the lorry from whom accused -2 purchased the lorry under hire purchase agreement, filed a petition CMP No. 2146/78 for being impleaded in this revision. After hearing the arguments, filed on both sides and after taking into consideration of the facts that the second petitioner is the real owner of the lorry and the first petitioner purchased the same from the second petitioner under a hire purchase agreement mentioned above and allowed the petition. Thus he is impleaded as the second petitioner.

4. Sri D. Satyanarayana the learned Counsel for the petitioners contends that the learned Additional Sessions Judge ought not to have passed the order confiscating the lorry APD:3005 in view of the provision of sec. 59 (1) (ii) of Andhra Pradesh Forest Act, 1967, which gives power to the Divisional Forest Officer or the learned Sessions Judge as the case may be, to impose a compounding fee of a sum of money which shall not, in any case, be less than the value of the forest produce or more than four times such value as estimated by such forest officer in addition to the value of the forest produce, where such offence involves any forest produce which in the opinion of the Forest Officer may be released.

5. The learned Public Prosecutor, on the other hand, contends that the learned Additional Sessions Judge has given cogent reasons as to why the order of confiscation of the lorry should be passed and hence the order cannot be said to be vitiated with any illegality. He also contends that the revision is not maintainable.

6. I would like to deal first with the question whether the revision is maintainable. The learned Public Prosecutor contends that the Andhra Pradesh Forest Act, 1967 does not provide for a revision and hence the order passed by the learned Additional Sessions Judge, in the appeal became final. This question was considered by the Allahabad High Court in *Empress Of India vs. Nathukhan*

1892 ILR (4) All 417. It was a case under the Indian Forest Act. That was also a case against the order of confiscation. Before the learned Single Judge, it was argued that in as much as there is no provision for revision in the Act itself against the order passed by the Appellate authority, the order passed by the Judge in appeal against the decision of the Magistrate becomes final and it is not open to revision u/s 297, Code of Criminal Procedure (as it was then). The learned Single Judge did not accept that contention but held that he did not think the terms of the section referred to excluded the ordinary revisional powers of the High Court over a subordinate. Tribunal over the exercise of its criminal jurisdiction where there had been a material error in a judicial proceeding. In the absence of any express words to that effect, the learned single Judge observed that he must hold that the application now before him has been properly preferred and can be entertained.

7. The full Bench of this Court had an occasion to consider a similar question with reference to the provisions of Essential Commodities Act in Public Prosecutor Andhra Pradesh vs. L. Ramayya 2. u/s 6-C of the Essential Commodities Act, the District and Sessions Judge was the appellate authority. The learned District and Sessions Judge confirmed the order of confiscation passed by the Collector, It was contended before the learned Judges that there is no provision in the Essential Commodities Act for the revision and hence, the order passed by the Sessions Judge became final and the Revision Petition filed under Sections 435 and 439 of Code of Criminal Procedure against the order of the Appellate Authority u/s 6-C of the Essential Commodities Act is not maintainable. This contention was rejected by the Full Bench The learned Judges held the question of maintainability of revision petition that the term "proceeding" as mentioned in section 435 Criminal Procedure Code cannot necessarily be said to have any reference by itself to commission or trial of an offence. There are other provisions in the Code of Criminal Procedure itself which are not concerned or not necessarily concerned with the commission or prevention of an offence, for instance sections 488, 144, and 133. Therefore, for attracting sections 435 and 439 of the Code of Criminal Procedure, what is important is whether the proceeding was held in an inferior Criminal Court. It does not matter even if the proceeding cannot be said to have been held under the Code of Criminal Procedure. The learned Judges further held that it is enough if it is made by an inferior criminal court and the order is a judicial order. The test was not the nature of the proceeding but the nature of the court in which that proceeding was held that would determine the issue. Therefore, for attracting Sections 435 and 439 of Code of Criminal Procedure what is important is whether the preceding was held in an inferior criminal court. It does not matter even if the proceeding cannot be said to have been held under the Code of Criminal Procedure, The learned Judges finally held that.

"The confiscation proceedings being in the nature of the criminal proceeding, the District and Sessions Judge acts as an inferior criminal Court in relation to the High Court within the meaning of Sections 435 and 439 of Code of Criminal

Procedure. A revision is maintainable u/s 435 or 439 of Code of Criminal Procedure against the order of the appellate authority u/s 6-C of the Essential Commodities Act even though the confiscation proceedings cannot be said to be those that are held under the Criminal Procedure Code.

8. The ruling of the Full Bench, though given under the Essential Commodities Act, is equally applicable to the order of confiscation passed by the appellate Judge under the provisions of Andhra Pradesh Forest Act. The order passed by the Additional Sessions Judge should be deemed to have been passed by a Court which is inferior to the High Court. Hence, a revision can lie before the High Court and the High Court is empowered to dispose of the matter in exercise of its revisional powers. It is under these circumstances that I hold that the revision petition is maintainable.

9. The next question that requires consideration is whether the order passed by the learned Additional Sessions Judge for confiscating the lorry u/s 44 (2-C) is correct or not.

10. To examine this question, I would like to peruse the relevant provisions in the Act which are sections 44 and 59. Section 44 reads as follows;

"44 (1) Where there is reason to believe that a forest offence has been committed in respect of any timber or forest produce, such timber, or forest produce, together with all tools, ropes chains, boats, vehicles and cattle used in committing any such offence, may be seized by any forest officer or police officer.

(2) xxx xxx xxx

(2A) Where an authorised officer seizes under sub-section (1) any timber or forest produce or where any such timber or forest produce is produced before him under sub-section (2) and he is satisfied that a forest offence has been committed in respect thereof he may order confiscation of the timber or forest produce so seized or produced together with all tools ropes, chains, boats or vehicles used in committing such offence.

(2B) No order confiscating any property shall be made under sub-section (2-A) unless the person from whom the property is seized is given:

(a) a notice in writing informing him of the grounds on which it proposes to confiscate such property.

(b) an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds for confiscation; and

(c) a reasonable opportunity of being heard in the matter.

(2C) Without prejudice to the provisions of sub-section (2-B), no order of confiscation under sub-section (2-A) of any tool rope, chain boat or vehicle shall be made if the owner thereof proves to the satisfaction of the authorised officer that it was used in carrying the property without his knowledge or connivance or

the knowledge or connivance of his agents, if any, or the person incharge of the tool, rope, chain, boat, or vehicle in committing the offence and that each of them have taken all reasonable and necessary precautions against such use.

(2D) X X X X

(2E) Any person aggrieved by an order passed under sub-section (2-A) or sub-section (2-D) may within thirty days from the date of communication to him of such order, appeal to the District Court having jurisdiction over the area in which the property has been seized and the District Court shall after giving an opportunity to the parties of being heard, pass such order as it may think fit and the order of the District Court so passed shall be final."

Section 59 reads as follows;

"59 (1) Any forest officer, especially empowered in this behalf by the Government may accept as compensation from any person who committed or in respect of whom it can be reasonably inferred that he has committed any forest offence other than an offence u/s 52 Section 55-.

(i) A sum of money not exceeding fifty rupees where such offence is of a trivial nature:

(ii) a sum of money which shall not in any case be less than the value of the forest produce, or more than four times such value as estimated by such forest officer in addition to the value of the forest produce, where such offence involves any forest produce which in the opinion of the forest officer, may be released; and

(iii) X X X X

11. Relying upon the provisions of sub-section (2-C) of section 44, Sri Satyanarayana, the learned counsel for the petitioner, contends that the 1st petitioner is only a hirer under the hire-purchase agreement and it is the 2nd petitioner that is the real owner of the vehicle and he, therefore, contends the even if the prosecution case that the 1st petitioner used the vehicle is accepted, it was used without the consent or knowledge or connivance of the 2nd petitioner and hence, the vehicle should not be confiscated detrimental to the intererests of the real owner.

12. A perusal of section 44 (2-C) is clear enough to show that if the real owner proves to the satisfaction of the authorised officer that it was used in carrying the property without his knowledge or connivance, no order of confiscation of the vehicle in question u/s 44 (2-A) shall be made.

13. The question is whether the 1st petitioner who purchased the vehicle in question under hire-purchase agreement and who is in possession and enjoyment of the vehicle under the said agreement is the owner or not.

14. u/s 2 (19) of the Motor Vehicles Act of 1939, owner means that person in possession of the vehicle under the hire-purchase agreement. In view of the

definition u/s 2 (19) the 1st petitioner is the owner of the vehicle and the 2nd petitioner cannot be deemed to be the owner of the vehicle. If the 2nd petitioner has got any rights under the said agreement, he can proceed against the 1st petitioner.

15. Thus the main question as to order of confiscation of the vehicle requires consideration, It is not in dispute that the value of 440 sandal wood billets was fixed by the Divisional Forest Officer, Cuddapah at Rs. 4,550/- in the show cause notice issued by him to the 1st petitioner. The value of the lorry was shown as Rs. 19,950/-under hire-purchase agreement. Thus it is clear that lorry of the value of Rs. 19,950/-will be confiscated for the illicit transport of sandal wood bille(sic)s of the value of Rs. 4,550/-.

16. The provision for confiscation of a vehicle is provided in Sec.44 of the Act if it is used in illicit transporting of the forest produce. The pose for providing such a stringent provision in the Act is to prevent the use of vehicles. But this provision cannot be resorted to, as a matter of course.

17. Before resorting to this provision the Forest Officer has to take a decision that Section 59 cannot be resorted to. When the Legislature in its wisdom has taken care in (he interests of justice to provide Section 59 in the Act giving power to the Forest Officer for compounding the offence by accepting as compensation from any person who committed or in respect of whom it can be reasonably inferred that he has committed any forest offence other than an offence under sections 52 and 55, a sum of money which shall not in any case be less than the value of the forest produce or more than four times such value as estimated by such Forest Officer where such offence involves forest produce which in the opinion of the forest officer should be retained by Government. Section 59(2) gives power to the Forest Officer to discharge the person, If in custody and Section 59(2) (iii) gives him power to release the vehicle seized against such person or properly on the receipt of the sum of money paid. When the Legislature has given the Forest Officer the power to compound the offences u/s 59, the Forest Officer should exercise normally that power unless he gives reasons specially as to why he declines to apply that provision of Section 59 (1) and also 59 (2) (iii). The Andhra Pradesh Forest Offences (Compounding and Prosecution) Rules, 1969 also throws some light on this aspect. Proviso to rule 4 states that no enquiry shall be held if the accused who has committed a forest offence other than an offence under Sections 52 and 55 expresses his willingness to have the offence committed and to pay compensation therefor. Rule 5 says that every accused who expresses his willingness to have the offence compounded as provided in rule 4 shall forthwith give a written undertaking in that regard in form "A".

18. In fact the statements of the accused were recorded in form "A" for the purpose of the offence being compounded as the accused gave their willingness, to that effect. But the forest officer did not proceed with compounding the offence. From the above provisions of Section 59, there cannot be any doubt that

an accused who commits an offence under the Forest Act can seek to have the offence compounded by paying the sum as imposed by the Forest Officer u/s 59 (1) (iii) and get release of the vehicle u/s 59 (2) (iii). Merely because the owner himself was found to have abetted the offence in respect of the forest produce, does not mean that provisions u/s 59 are not applicable. When Section 59 is provided in the Act, it is clear that the Legislature has intended that the Forest Officer should compound the offence on the request of the accused. If the accused is not prepared for having the offence compounded, then the Forest Officer should proceed to apply any provisions of Section 44. There is no provision the Act prohibiting the Forest Officer from Compounding the offence, merely because the owner of the vehicle is actually found to have abetted the commission of offence. In view of the provisions of Section 59 the abetment of the commission of the offence by the owner of the vehicle should be taken into consideration in imposing the quantum of the compounding fee. Under these circumstances, I have to hold that either the Forest Authorities or the learned Additional Sessions Judge is not justified in not applying the provisions of Section 59 of the Forest Act to the Case of the 1st petitioner. Thus, I have no hesitation to hold that both the learned Additional Sessions Judge, Cuddapah and the Divisional Forest Officer, Cuddapah committed illegality in not following the provisions of Section 59 of the Act and in ordering the vehicle (lorry No. APD 3005) to be confiscated. Applying the provisions of Section 59 (1) (iii), I direct the 1st petitioner to pay a sum of Rs. 10,000/- within two months from to-day. Thus I hold that the order of confiscation is set aside and the 1st petitioner is directed to pay a sum of Rs. 10,000/- within two months from to-day. In case of default, the authorities concerned can take appropriate proceedings for the recovery of the said amount from the 1st petitioner.

In the result, the revision case is allowed.