
(1997) 07 PAT CK 0023

In the Patna High Court

Case No : Cr.W.J.C. No's. 431 and 467 of 1994 (R)

Raj Kumar Prasad, Gaukaran Prasad Singh and Others

APPELLANT

Vs

State of Bihar and Another

RESPONDENT

Date of Decision : 30-07-1997

Acts Referred:

Bihar Kendu Leaves (Control of Trade) Act, 1973 — Section 14, 15, 16, 2(3), 21
Forest Act, 1927 — Section 33, 41, 42, 5(3), 50

Citation : (1997) 2 PLJR 880

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : B.K. Dubey, for the Appellant; P.D. Agrawal, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Deb, J.—Both these writ petitions are taken up together for the purpose of hearing and disposal as the points of law involved in both the cases are the same.

2. In Cr.W.J.C. No. 431 of 1994 (R), the Petitioner Raj Kumar Prasad has challenged the confiscation proceedings in confiscation case No. 18 of 1991 in which the vehicle of the Petitioners bearing numbers BRB-4281 has been confiscated. The said vehicle was seized in connection with a criminal case for which offence report was submitted for illegal transportation of Kendu Leaves punishable Under Sections 2(3), 5, 6 and 14 of the Bihar Kendu Leaves (Control of Trade) Act, 1973 and also offence under Sections 33, 41, 42 and 52 of the Indian Forest Act with Bihar Amendment Act of 1989. The prosecution report was submitted in C.F. case No. 12/91 and on the basis of the seizure being made on the above vehicle above mentioned confiscation case was started and after hearing both the parties confiscation case was allowed and the vehicle was permitted to be confiscated.

3. Similarly in C.W.J.C. No. 467 of 1994 (R), the Petitioners, Gaukaran Prasad Singh and two Ors. had sought for quashing of the Confiscation case No. 19/91

and the order of confiscation passed on 31.12.1993 by which the vehicle belonging to the Petitioners being B.H.Y-4575 and B.R.13-G-8117 has been confiscated. In this case also seizure was made of the abovementioned vehicles for offences under the Bihar Kendu Leaves (Control of Trade) Act, 1973 together with different penal provisions of the Indian Forest Act.

4. The contention of the Petitioners in both these writ petitions is that such confiscation of the vehicles for an offence under the Bihar Kendu Leaves (Control of Trade) Act is bad as there is no provision under the said Act for confiscation of any vehicles under the Act. It is further contended that when alleged offences are specifically being contained within the Kendu Leaves Act, there is no scope of inclusion of offence under the Indian Forest Act as the Kendu Leaves Act is a self sufficient Act. It is the further contention of the Petitioners that any leaves from the forest area comes within the purview of the Indian Forest Act but for Kendu leaves specific provisions have been made under the Kendu Leaves Act as Kendu Leaves cannot only be grown within the forest area but also in the Raiyati land of private individuals and the transportation had been governed by a Special Act as mentioned above.

In support of the contention of the Petitioners, a Division Bench judgment of this Court as reported in Smt. Chandrawati Devi Vs. The State of Bihar and Others, has been referred to, wherein it was held that transportation of Kendu Leaves is covered by a separate enactment, namely, Bihar Kendu Leaves (Control of Trade) Act, 1973 and as such violation in respect of transportation of Kendu Leaves has to be looked within the Special Enactment and not under the Indian Forest Act and as such an offence in respect of Kendu leaves cannot be termed as a forest offence under the Forest Act and when there is no provision of confiscation of vehicle under the Kendu Leaves Act then the Bihar Amendment of the Indian Forest Act as contained in Sections 5(3), 50 and 52(3) are not applicable.

5. In analysing Sections 14, 15 and 16 of the Kendu Leaves Act, it has been held by the Division Bench that when the Act provides only for confiscation of Kendu Leaves u/s 14, 15 and 16 of the Act and not the vehicle carrying it where carriage is in contravention of provisions of the Act then there is no scope of confiscation proceeding of the vehicle concerned rather the vehicle in question may be kept or seized for the time being for an enquiry u/s 5 of the Act and the same should be released immediately after reasonable time on conclusion of enquiry.

6. On the basis of that judgment of the Division Bench, the contention of the Petitioner is that the Indian Forest Act being not applicable with its Bihar Amendment, confiscation of the vehicle belonging to the Petitioners regarding offences for illegal transportation of Kendu Leaves under the Kendu Leaves Act is bad and illegal on the face of it.

7. Mr. P.D. Agrawal, appearing for and on behalf of the State has referred to a recent judgment of the Supreme Court as reported in State of Madhya Pradesh

Vs. Swaropchandra, and submitted that the enunciation of the Apex Court of applicability of Indian Forest Act in respect of an offence under the special Enactment makes the Division Bench judgment of this Court, as referred above, not a good law. In the present case, not only the penal provision of Kendu Leaves have been mentioned in the offence report but together with it penal provision of Indian Forest Act have also been included and as such when offence under the Indian Forest Act are also being included in the offence report then the confiscation of the vehicle cannot be said to be bad in view of the provisions of the Bihar Amendment of Section 52 of the Indian Forest Act. Section 52 of the Bihar Amendment Act as contained in Act No. 9 of 1990, seizure of the vehicles containing forest articles are included and it has also been enumerated that such vehicles are liable for confiscation.

8. A distinction was sought to be made with reference to the Division Bench judgment from the side of the Petitioners that Kendu Leaves being not the product of forest alone and can be grown by the individuals in their raiyati land also and when a special enactment had been made to control the trade of the Kendu leaves and when the special Enactment is a self sufficient Act then the application of Indian Forest Act is redundant in view of Section 21 of the Kendu Leaves Act.

9. Section 21 runs as follows:

(21) Indian Forest Act, 1927 not to apply to Kendu leaves for purpose covered under the Act. Nothing contained in the Indian Forest Act, 1927 (No. 16 of 1927) shall apply to kendu leaves in respect of matters for which provisions are contained in this Act.

This Section 21 had not been dealt with in the referred Division Bench judgment of this Court. It is true that kendu leaves can not only be the forest produce but it can also be produced by the individuals in their raiyati land and as such it was felt necessary by the State Legislature to come with a separate Enactment for regulating the trade of the kendu leaves and for that reason there is departure from the Indian Forest Act regarding the grade of Kendu leaves and on this special Enactment provision under the Indian Forest Act cannot be applicable which are governed by the special Enactment.

10. The learned Counsel for the Petitioners also has referred to Anr. judgment of the Bombay High Court in support of his contention as reported in Mrs. Mangal Sarjerao Bharate Vs. A.B. Bhangre and others,

That judgment has got no much relevance in the present case, when in that case a vehicle was seized on contemplation that the same may be used in the commission of a forest offence, it was held by the Bombay High Court that on such presumptive basis the seizure is bad and as such confiscation is also bad. Here, the Kendu leaves had been seized while it was ready for transportation on the vehicles which had been confiscated after seizure. So, Bombay case has got no relevance in the present circumstances of the case.

11. We are not much concerned in this writ petition regarding the offences as per the offence report submitted both under the Kendu Leaves Act and under the Indian Forest Act. If the penal provisions of the Indian Forest Act are applicable then the confiscation is within the jurisdiction under the Indian Forest Act. u/s 2(1) of the Kendu Leaves Act, it has been specified that words and expression used but not defined in this Act and defined in the Indian Forest Act, 1927 shall have the same meanings respectively assigned to them in that Act. Whether the Indian Forest Act would be applicable regarding the penal provision or not is a matter to be considered during the trial of the criminal case but we are concerned with the confiscation proceedings. I have already mentioned that if the offence under the Indian Forest Act are also applicable in the circumstances of a case i.e. if the leaves are being taken from the forest areas then confiscation is within the jurisdiction and it cannot be had as there is application of Indian Forest Act with its Bihar Amendment. But let us take the extreme case where the forest offence under the Indian Forest Act would not be attracted and only the penal provisions of kendu leaves are attracted in the circumstances of a case then whether the confiscation of the vehicle carrying the kendu leaves is permissible or not is the subject matter to be decided in the present writ petitions.

12. As per the Division Bench judgment the offence for trade of kendu leaves are not the forest offence and those being not the forest offence and when there is no provision under the Kendu Leaves Act for confiscation of the vehicle carrying the Kendu leaves then the Indian Forest Act cannot come in rescue to play for the purpose of confiscation of the vehicles.

13. I have already mentioned that Section 21 of the Kendu Leaves Act had never been considered by the Division Bench wherein as mentioned above, it has been specifically mentioned that the Indian Forest Act could not be applicable in respect of Kendu Leaves "in respect of matters for which provisions are contained in this Act". There is no provision for confiscation of the vehicle carrying the Kendu leaves under the special Act but basically the Special Enactment is based on the Indian Forest Act itself only because Kendu leaves can be grown by private individuals also, it was necessitated to control the trade of kendu leaves to come up with a Special Enactment. So even if the Kendu Leaves Act is a self sufficient Act then also all provisions of Indian Forest Act cannot be debarred for an application u/s 23 of the Act because it has been specified that in the field where the Act is silent then the provision of the Indian Forest Act may be applicable. Similar position was in question before the Supreme Court in the ruling as mentioned above, in that case in the State of Madhya Pradesh, a vehicle was confiscated for offence under the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, but there was no specific provision of confiscation of the vehicle under that Special Act but by the M.P. amendment of the Indian Forest Act as is there in the State of Bihar, there is provision for confiscation of the vehicles transporting the forest produce. The M.P. High Court held as is done by a Division Bench of this Court as mentioned above that the confiscation of the vehicle being

not governed by the special enactment is bad in the eye of law. Then the State of M.P. questioned the same before the Supreme Court. It was held by the Apex Court that even if a special Act is made with a view to prevent illicit transportation of basically the forest produce or the specified forest produce and have been provided for under the Special Enactment then it cannot be said that the Legislature intended to exclude the confiscation of the container i.e. vehicle or receptacles or boats, carts or tools used for carriage of the specified Forest produce. It is held that the Indian Forest Act with its Special Enactment shall always occupy the field in respect of confiscation of vehicle even if there is no specific provisions under the Special Enactment because the Special Enactment, when silent regarding the confiscation of the container then the Indian Forest Act with its State Amendment would definitely come into play to occupy the field in that jurisdiction.

14. In the M.Ps. Special Enactment, as mentioned above, there is also provisions like that of Section 21 of the Kendu Leaves Act regarding the exclusion of the applicability of the Indian Forest section. That Section was Section 22. On going through the judgment and the Act, it is found that Section 22 of the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam is exactly in wordings the same as that of Section 21 of the Kendu Leaves Act. While analysing the provisions of Section 22 of the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam wordings of which are exactly same as that of Section 21 of the Kendu Leaves Act, the Hon'ble Supreme Court held as follows:

In our view, the High Court was clearly in error in reaching the conclusion that there is no such provision under the Forest Act. It is seen that the Act occupies the field in respect of the specified matters enumerated thereunder. In view of the fact that the Forest Act, as amended under the State Amendment Act 9 of 1965 has already occupied the field for confiscation of the vehicles etc. it is not necessary, again to provide the same procedure under the Act. In this behalf, it is relevant to look into the procedure provided in the Amendment Act 9 of 1965. Section 52 deals with the secure of the property liable to confiscation and procedure thereunder. Section 52A deals with the appeal against orders of confiscation. Section 52B deals with revision before court of Sessions against order of appellate authority. Section 53 gives power to the Forest Officer to release the seized property under certain circumstances enumerated thereunder. Thus, it could be seen that Sections 52 and 52A, as amended by the State Amendment Act 9 of 1975, having occupied the field in respect of the confiscation of vehicles etc. and the procedure thereunder, the Legislature had not expressly provided such procedure again for confiscation under the Act. The High Court, therefore, was clearly in error in coming to the conclusion that by operation of Section 22 of the Act, the vehicle used for transportation of the specific forest produce in contravention of the Act has excluded the applicability of the provisions of the Forest Act, as amended by Act 9 of 1965 in respect of vehicles etc. It was confined only to specified forest produce.

15. In the above portion of the Supreme Court judgment, if we just put the relevant Section of the Bihar Amendment of the Indian Forest Act and that of the Kendu Leaves Act, the result comes to the same position that the confiscation is permissible under the Indian Forest Act even if seizure is made under the Kendu Leaves Act regarding the vehicle containing the Kendu leaves.

16. In view of the Supreme Court decision, as mentioned above the Division Bench judgment of this Court does not remain a good law and hence practically the judgment of the Division Bench has been nullified by the Apex Court. Hence, these writ petitions have got no force and as such are dismissed and confiscation on these grounds cannot be said to be bad in the eye of law.