

(2007) 11 AHC CK 0008
In the Allahabad High Court

Rajendra Kumar Gupta

APPELLANT

Vs

State of U.P., Prescribed Authority/Joint Secretary, Forest
Anubhag-2 Govt. of U.P., Pradhikrit Adhikari/Prabhagiya
Nideshak, Samajik Vankiya Van Prabhag and Van Kshetra
Adhikari

RESPONDENT

Date of Decision : 15-11-2007

Acts Referred:

Forest Act, 1927 — Section 26

Citation : (2008) 1 AWC 938

Hon'ble Judges : Ashok Bhushan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ashok Bhushan, J.—Heard learned Counsel for the petitioner and Sri Prashant Mathur, learned standing counsel appearing for the respondents. By this writ petition, the petitioner has prayed for quashing the judgment and order dated 5th January, 2006 passed by respondent No. 3 confiscating the Truck No. UP.78B 0047 of the petitioner and the order dated 4th September, 2006 passed by the State of U.P. dismissing the appeal of the petitioner.

2. Brief facts necessary for deciding the writ petition are; officials of the Forest Department intercepted the aforesaid truck on 9th December, 2004 at 4.00 A.M., which was loaded with timber of Seesam and Babool trees. One Lallu Prasad Shukla, who claim to be the owner of the trees and the driver of the truck were found in the truck. The timber and the vehicle both were seized and seizure memo was sent by the officials of the Forest Department to respondent No. 3. A range case being Range Case No. 29 of 2004-05 was registered lender Section 26 of the Forest Act, 1927. The petitioner is the owner of the truck, who made an application before the Chief Judicial Magistrate who directed release of the truck in favour of the petitioner. The Forest Department filed a criminal revision challenging the order of the Chief Judicial Magistrate in which the revisional Court

stayed the order of Chief Judicial Magistrate. The petitioner subsequently appeared before respondent No. 3 and filed his objection claiming release of the truck. The petitioner in his objection, claimed that he has given his truck to Lallu Prasad Shukla on hire for transporting trees belonging to his own field. Before the respondent No. 3 objection as well as affidavit was filed by the petitioner. One G.C. Tripathi, Forest Range Officer and one Ram Pyare, Forest Inspector appeared before respondent No. 3 as P.W.-1 and P.W.-2. The respondent No. 3 passed an order confiscating the truck u/s 52-A of the Forest Act, 1927 as amended by U.P. Amendment. The petitioner filed an appeal against the said order, which has been dismissed by the State of U.P. Challenging the aforesaid orders, present writ petition has been filed.

3. Learned Counsel for the petitioner, challenging the orders, contended that petitioner's case before respondent No. 3 was that petitioner, who is the owner of the truck has nothing to do with the transportation of timbers in the truck and he has given the truck on hire to Lallu Prasad Shukla for transporting the tress belonging to his own field. Learned Counsel for the petitioner further contended that there was no evidence led before the respondent No. 3 to establish that there was any accomplicity of the petitioner in the incident. Learned Counsel for the petitioner placed reliance on a judgment of this Court reported in Arvind Kumar Dube Vs. State of U.P. and Others,

4. Learned standing counsel, refuting the submissions of learned Counsel for the petitioner, contended that orders have rightly been passed by respondent No. 3 confiscating the truck since it was involved in transportation of forest produce and it was loaded! in the truck belonging to the forest area. Learned standing counsel has placed reliance on judgments of Hon'ble Supreme Court reported in State of Madhya Pradesh Vs. Swaropchandra, and State of Karnataka Vs. K.A. Kunchindammed,

5. I have considered the submission of learned Counsel for the parties and perused the record.

6. The confiscation of the vehicle found involved in a forest offence is dealt with Section 52 of the Forest Act(1927. By U.P. Amendment Act No. 1 of 2001, the Forest Act, 1927 has been amended and Section 52-A has been added in principal Act providing for procedure of seizure. Section 52A(4) and 52A(5), which are relevant for the purpose, are extracted below:

52A(4). No order under Sub-section (1) shall be made without giving notice, in writing, to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property:

Provided that in an order confiscating a vehicle, when the offender is not traceable, a notice in writing to the registered owner" thereof and considering his objection if any will suffice.

52A(5). No order of confiscation of any tool, boat, vehicle, cattle, rope, chain or

other article shall be made if any person referred to in Sub-section (4) proves to the satisfaction of the authorised officer that any such tool, boat, vehicle, cattle, rope, chain or other article was used without his knowledge or connivance or without the knowledge or connivance of his servant or agent, as the case may be, and that all reasonable precautions had been taken against use of the objects aforesaid for the commission of the forest offence.

Under Section 52-A(4) notice is required to be given to the person from whom the property is seized and the order for confiscating the vehicle can be passed after considering the objection of the owner. Sub-section (5) of Section 52-A provides that no order of confiscation is to be made when the person referred to Sub-section (4) proves that any such vehicle was used without his knowledge or connivance or without his knowledge or connivance of his servant or agent, as the case may be.

7. From a perusal of the Fard Baramadagi dated 9th December, 2004, it is clear that two persons, namely, Lallu Prasad Shula and Bajrangi Singh were found on the spot and it was claimed other 4-5 persons ran away. Lallu Prasad Shukla also made an application for release of the timbers and truck. Bajrangi Singh is said to be driver of the truck. The report clearly mentioned that the vehicle has been used by his driver with the knowledge of the owner and Range Case No. 29 of 2004-05 and 30 of 2004-05 have been registered. The petitioner admitted before respondent No. 3 that truck was given to Lallu Prasad Shukla for transporting timbers belonging to his own field and trees of his neighbour. The petitioner stated that petitioner is a transporter and is engaged in transport business. Thus from the materials brought on the record, it is apparent that truck for transportation of the timbers was used with the knowledge of the owner. The respondent No. 3 recorded finding based on evidence on record that the incident as reported by the forest officials took place and the truck was used for transportation of timbers, which belong to forest. It was found that there was no bulity along with the truck. Respondent No. 3 further held that permission for transportation of trees was not there and there being no papers regarding the goods which was transported, it was a clear case of forest offence within the meaning of Section 26. While deciding Issue No. 3 it was noticed that the fitness of the vehicle was till 14th July, 2000. Learned Counsel for the petitioner has submitted that there was no evidence to prove that the goods were being transported with the knowledge or connivance of the petitioner. Reliance has been placed by the petitioner on the judgment in Arvind Kumar Dube's case (supra). In Arvind Kumar Dube's case following was laid down by this Court in paragraph 4:

4. In view of the facts and circumstances of the case and the submissions made by the learned Counsel for the petitioner and from the perusal of the record that it is clear that petitioner is a bona fide owner of the truck in dispute and at this stage the prosecution has failed to establish that the petitioner was having knowledge that his truck was used in the commission of the abovementioned

offence and the petitioner himself is not accused in the abovementioned case. In such circumstances it will be proper to release the truck in dispute in favour of the petitioner by imposing certain necessary conditions, so the Up Van Sanrakshak/Pradhikrit Adhikari, Rashtriya Chambal Sanctuary Project, Agra, is directed to release the aforementioned truck in favour of the petitioner by imposing certain necessary conditions, which are required by the law.

This Court in the said judgment has directed for release by holding that prosecution had failed to establish that petitioner was having knowledge that his truck was used in the Commission of the abovementioned offence and the petitioner himself was not the accused in the above mentioned case. The above case does not help the petitioner in the present case due to following two reasons. Firstly in Arvind Kumar Dubey's case the owner was not an accused, which was noted by the Court in paragraph 4 of the judgment whereas in the present case the petitioner is an accused and report was submitted and a case being Case No. 30 of 2004-05 (State v. Rajendra Kumar Gupta) was registered, secondly with regard to confiscation of vehicle seized, which is involved in forest offence relevant provision is Section 52A(5). The statutory scheme put burden on the owner to prove to the satisfaction of the forest officer that the vehicle was used without his knowledge or without the knowledge or connivance of his servant or agent. The statutory scheme does not put the burden on the State to prove that it was being used with the knowledge or connivance of the owner or his servant or agent. After the UP. amendment in Section 52 by UP. Act No. 1 of 2001 it is not the Magistrate who is to consider the question of release nor any criminal case is to be registered and tried, rather the release is to be made in accordance with the statutory scheme where burden is put on the owner to prove to the satisfaction of the Forest Officer that such vehicle was used without his knowledge or connivance or without knowledge or connivance of his servant or agent, as the case may be. In the present case, it was admitted by the petitioner that he had given the vehicle for transporting the timber to Lallu Prasad Shukla. Thus transportation of timbers by Lallu Prasad Shukla was within his knowledge.

8. Now remain the question as to whether use of vehicle in forest offence was in his knowledge or connivance. In the objections, which were filed by the petitioner before respondent No. 3, copy of which has been filed as Annexure-9 to the writ petition, the petitioner stated that offence regarding cutting of woods and transportation of the forest produce does not relate to the owner and it is a dispute between the department and Lallu Prasad Shukla and no such fact was in his knowledge. The respondent No. 3 after considering all relevant facts including the statement made by two forest officials, P.W.-1 and P.W.-1 and the affidavit and objections of the petitioner recorded finding that the timbers were being transported with the connivance of the petitioner. The petitioner failed to prove to the satisfaction of the Forest Officer that the vehicle was used without his knowledge or connivance. The respondent No. 3 has relied on several circumstances and facts as mentioned by him while deciding Issue No. 3 in the order. No papers with regard to transportation of the timbers was there with the

truck nor there was any permission for transportation of the timbers from any authority. The respondent No. 3 not being satisfied that vehicle was used without the knowledge or connivance of the owner, no error has been committed by confiscating the said vehicle. In Arvind Kumar Dube's case (supra) before the learned Single Judge of this Court the provisions of Section 52A(5) as amended by UP. Act No. 1 of 2001 were not placed, which clearly provided that burden is to be discharged by the owner and it is the owner who has to satisfy the Forest Officer that forest offence was committed without his knowledge or connivance. In view of this the judgment in Arvind Kumar Dube's case does not help the petitioner. The appellate authority has also affirmed the order of respondent No. 3 after considering the submissions of the petitioner.

9. There is one more reason due to which the confiscation of the vehicle cannot be faulted. Section 52A(5), as quoted above, provides that no order for confiscation of any vehicle be made if any person referred to in Sub-section (4) proves to the satisfaction of the authorised officer that the vehicle was used without his knowledge or connivance or without the knowledge or connivance of his servant or agent, as the case may be. In a case where the vehicle is being used by servant or agent, which is involved in a offence, the vehicle can be confiscated unless it is proved that vehicle is used without the knowledge or connivance of the servant. Sub-section (5) of Section 52A uses two clauses, i.e., (a) without his knowledge or connivance or (b) without the knowledge or connivance of his agent or servant, as the case may be. In the present case, the vehicle was being driven by the driver of the petitioner, namely Bajgrangi Singh, which fact is not denied. It is not the case of the petitioner that the vehicle was used without the knowledge or connivance of the driver in the forest offence. The words "as the case may be" are relevant. Sub-section (4) of Section 52A provides that no order under Sub-section (1) be made without giving notice, in writing, to the person from whom the property is seized, and to any other person who may appear to the authorised officer to have some interest in such property. In the present case vehicle was seized from the driver of the petitioner, who was present on the spot. It is not the case of either of the parties that petitioner was present in the vehicle from whom the vehicle was seized. Sub-sections (4) and (5) of Section 52A have to be read harmoniously to give effect to the object and purpose of the statutory scheme. In Sub-section (5) when the words "as the case may be" are used, this has relevance. If the vehicle is seized from the agent or servant of the owner, it has to be proved that the vehicle was used in the forest offence without the knowledge or connivance of servant or agent of the owner. If the interpretation is accepted that in every case knowledge or connivance of owner has to be there for confiscation of vehicle, which was being used for offence, the words "as the case may be" becomes redundant. The owner of the vehicle may reside far of place and his agent and servant may be running, the vehicle and maintaining the records and owner may not have any knowledge of each and every transaction of the vehicle then in that case if it is to be held that confiscation cannot be made if owner proves that it was used without his

knowledge or connivance, the purpose and object of the Act be defeated. In the objection filed by the petitioner it is not even alleged that vehicle was used in the forest offence without knowledge or connivance of the driver of the vehicle, namely Bajrangi Singh, who was also an accused. The vehicle having been seized from Lallu Prasad Shukla and driver of the vehicle, Section 52A(5) second clause, which provide that without the knowledge or connivance of his servant or agent, shall come into play and it being never the case of the petitioner that it was not used with the knowledge or connivance of servant nor there being any material to prove to the satisfaction of respondent No. 3 that vehicle was not used with the knowledge or connivance of driver, who can be said to be servant/agent of the petitioner, no fault can be found with the confiscation.

10. Now comes the judgment relied by the learned standing counsel. In judgment of the Apex Court in State of Madhya Pradesh's case (supra) the truck carrying logs of timber was seized and notice was issued to the driver of the truck whether he is willing to compound the offence at the value of truck as Rs. 70,000/-. The driver consented and deposited Rs. 1,000/-. The truck was confiscated since the value was not paid. The owner challenged the power of seizure. The High Court held that M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969 does not provide power of confiscation of the truck and by operation of Section 22 of the M.P. Van Upaj (Vyapar Viniyaman) Adhiniyam, 1969, the Forest Act, 1927 is not applicable to the confiscation of the truck. The Apex Court held that there is no provision for release of the vehicle by the officer except on payment of the value thereof. The Apex Court observed following in paragraph 6 of the said judgment:

6. ...There is no provision for release of the vehicle by the officer except on payment of the value thereof. It is seen that when the Act was made with a view to prevent illicit transportation of the forest produce or the specified forest produce and seizure and confiscation have been provided for, could it 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, i.e., contend, in contravention of the provisions of the Act? The answer is obviously no.

The Apex Court further held that Forest Act as amended by Act No. 9 of 1965 already occupied the field for confiscation of the vehicle etc. Section 52 dealt with the seizure of property liable to confiscation. The Apex Court held that provisions of the Forest Act as amended by Act No. 9 of 1965 provide the procedure and the view of the High Court was incorrect. The said judgment was on different fact and issue, which has neither been raised in the present case nor involved.

Another judgment relied learned standing counsel is State of Karnataka's case (supra) where the Apex Court was examining the question as to whether under Karnataka Forest Act, 1964 order for interim custody of the vehicle will be passed by the Forest Officer or by the Magistrate exercising the power u/s 451 of Cr.P.C.

The Apex Court held that the order for interim custody shall be passed by the officer and not by the Magistrate. The issue involved in that case was again a different issue.

11. In view of the foregoing discussions, I do not find any error in the order passed by respondent No. 3 and the State Government. The confiscation of the vehicle was in accordance with law and no grounds have been made out in the writ petition for setting aside the said confiscation. However, looking to the fact that vehicle is old one, it is observed that the respondents while selling/ auctioning the vehicle will also permit the petitioner to participate in the process of sale of the vehicle and in case the owner offers the price of the vehicle as determined by respondent No. 3, the vehicle may be sold to him.

12. Subject to above, the writ petition is dismissed.