
(2015) 07 JH CK 0096

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 208 of 2014

Ram Ayodhya Yadav

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-07-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Forest Act, 1927 — Section 33

Penal Code, 1860 (IPC) — Section 34, 414

Citation : (2015) 5 FLT 851

Hon'ble Judges : Ravi Nath Verma, J

Bench : Single Bench

Advocate : Sudhir Sahay and Sunil Kumar Sinha, for the Appellant; Rajiv Ranjan Mishra, G.P. II, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Ravi Nath Verma, J—The petitioner - Ram Ayodhya Yadav by invoking extraordinary jurisdiction of this Court under Article 226 of Constitution of India has prayed to command upon the respondent No. 2 the Divisional Forest Officer-cum-Confiscating Authority, Ramgarh to forthwith release the truck of the petitioner bearing registration No. JH-02D-3183 seized in connection with Mandu P.S. Case No. 252 of 2011.

2. The facts of the case, which is relevant for determination of the issue involved in this writ application, in short, is that on a written report of the A.S.I., Mandu Police Station, aforesaid case was instituted on 03.12.2011 under Section 414/34 of the Indian Penal Code and also under Section 30(ii) of Coal Mines Act and under Section 33 of Indian Forest Act with the allegation that on the basis of some confidential information, three trucks including the truck of the petitioner was intercepted loaded with soft coal and on demand no paper was produced by the driver. On search, 500 bags of soft coal weighing almost 10 tones was found loaded in the truck of this petitioner where after a seizure list was prepared. It

was also alleged that said coal was illegally extracted from the forest area and after being processed into soft coal, it was sent in the coal market for sale.

3. It appears from the record that the informant of this case, who was Officer-in-Charge of Mandu Police Station sent a report to the Divisional Forest Officer, Ramgarh for initiation of confiscation proceeding of truck and the coal loaded on it and on the basis of said report, the confiscation case bearing No. 93 of 2011 was initiated and on service of notice this petitioner appeared and filed a show-cause with request to release the truck during the pendency of confiscation proceeding on the ground that the seized soft coal was being transported with valid documents and was purchased from Adarsh Coal Sale and Purchase Industrial Transporting Society Ltd., Tilaiya, Bokaro and it was processed coal not directly mined out from the forest of the closed mines and as such no case under Indian Forest Act or Mines Act is made out. It also appears that the confiscation proceeding was initiated in the year 2011 but till today it has not been concluded though the truck in question is a commercial vehicle.

4. Learned counsel appearing for the petitioner seriously contended that even if the confiscation proceeding has been initiated, the confiscation court has no right to sit over the matter for a long of about four years. It was also contended that the vehicle in question is a commercial one and it is kept in open space without adequate care and the vehicles are vulnerable to vagaries of nature and there will be a lot of damages and there is also apprehension that the parts of the vehicle will be removed. It was also submitted that as an interim measure, the court below may be directed to release the vehicle and the petitioner is ready to face the confiscation proceeding and also ready to comply any direction of this Court.

5. Contrary to the aforesaid submissions, the learned counsel representing the State and the respondent No. 2 opposed the prayer on the ground that the petitioner is not the owner of the vehicle and original owner Ishan Kumar Jain had sold the truck in question to this petitioner on 17.06.2011 but his name has never been entered in the owner-book and even after several reminders, the owner-book has not been produced in the confiscation proceeding. The said agreement of sale of vehicle is not registered and as such it requires strict proof of the same and since the confiscation proceeding is still pending in only exceptional case, the vehicle can be released in favour of the real owner. It was also submitted that the proceeding was delayed till May, 2013 due to non-filing of show-cause by the petitioner, who is claiming himself to be the owner.

6. In a case *Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujarat*, AIR 2003 SC 638 : (2002) 10 JT 80 : (2002) 10 SCC 283 : (2002) 3 SCR 39 Supp : (2003) 1 UJ 590 the Hon"ble Supreme Court has held that commercial vehicles seized in respect of offence shall not be kept in custody for a very long period. In paragraph 17 of the judgment, the Hon"ble Supreme Court has held as follows:

"In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police station for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

7. In another case *Bharath Metha Vs. State* by Inspector of Police Chennai, AIR 2008 SC 1970 : (2008) CriLJ 2245 : (2008) 4 SCALE 186 : (2008) 5 SCC 752 : (2008) AIRSCW 2289 the Hon'ble Supreme Court has held that the owner of article would not suffer because it has remained unused or there will be no chance of misappropriation and the court or police would not be required to keep the article in safe custody rather if proper Panchnama before handing over of article is prepared that can be used in evidence instead of its production before court. During trial, if necessary, evidence could also be recorded describing the nature of property in detail.

8. It is true that in Indian Forest Act, after conclusion of confiscation proceeding, there is a provision for appeal and revision but the authority cannot be allowed to continue the proceeding for such a long period where there is every apprehension that the vehicle in question which is standing in open space under the sky, will be converted into garbage due to weathering effect. Similarly, there is a genuine apprehension of the respondent No. 2 that since owner book showing the name of the petitioner has not been produced before the court, the seized vehicle cannot be released in favour of the petitioner. I am fully agreed with the view of the authority concerned. However, if during pendency of this writ application the owner book showing the name of the petitioner has been produced before the court below, the respondent No. 2 after proper enquiry and verification of the owner book and after full satisfaction that the petitioner is the owner of the vehicle, shall release the vehicle in favour of the petitioner as an interim measure after taking adequate security including bank guarantee equal to the value of the vehicle in question preferably within one month from the date of production of this order. The respondent No. 2 is further directed to take further steps to make a Panchnama and photograph of the vehicle before release which shall be kept on record for further use during proceedings, so that the proceeding may not hampered. The petitioner would also give an undertaking that he would not dispose of the vehicle or alienate in any way during pendency of the case in confiscation proceeding and would produce the vehicle as and when required by court concerned. If the petitioner violates any of the term of undertaking given by him and fails to produce the vehicle before the court, the authority shall be at liberty to forfeit the bank guarantee filed earlier in the court. The order of release will not prejudice the parties and will be subject to final decision of the confiscation case.

9. With these observations and directions, this revision application is, hereby, allowed.