
(2019) 12 JH CK 0143
In the Jharkhand High Court
Case No : Writ Petition (C) No. 4412 Of 2016

Ramautar Sao

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 10-12-2019

Acts Referred:

Indian Penal Code, 1860 — Section 379, 411

Indian Forest Act, 1927 — Section 33, 33(b), 41, 42

Citation : (2019) 12 JH CK 0143

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Somitra Baroi, Navneet Sahay

Final Decision : Allowed

Judgement

1. The present writ petition has been filed for quashing the order dated 11.01.2016 passed by the respondent no. 2 â?" the Revision Authority-cum-

Principal Secretary, Department of Forest, Environment and Climate Change, Government of Jharkhand, Ranchi in Revision Case No. 13 of 2013,

whereby the revision petition filed by the petitioner has been rejected. The petitioner has also prayed for quashing the original order dated 18.07.2011

passed by the respondent no. 4 â?" the Authorized Officer-cum-Divisional Forest Officer, Hazaribagh in Confiscation Case No. 5 of 2009,

confiscating the tractor and trailer loaded with 100 cft of stone boulders of the petitioner as well as the order dated 30.05.2013 passed by the

respondent no. 3 â?" the Deputy Commissioner, Hazaribagh rejecting the Confiscation Appeal No. 05 of 2011.

2. The factual background of the case as stated in the writ petition is that on 12.01.2009, the tractor and trailer bearing registration nos. JH-02K-4759

and JH-02K-6456 respectively of the petitioner were seized by the Beat Officer, Barkagaon Forest Area on the allegation that the stolen stone

boulders were being loaded over the same. The driver and the cleaner of the said vehicle were arrested and an FIR being Keredari P.S Case No. 4 of

2009 (G.R. No. 114 of 2009) was registered for the offences punishable under Sections 379/411 IPC and Sections 33/41/42 of the Indian Forest Act,

1927. The case was also registered by the Forest Department as G. Case No. 18 of 2009. The respondent no. 4 started a confiscation proceeding

being Confiscation Case No. 5 of 2009 and vide order dated 18.07.2011, the said tractor and trailer loaded with 100 cft of stone boulders were

confiscated. The petitioner preferred an appeal being Confiscation Appeal No. 5 of 2011 before respondent no. 3 which was rejected vide order dated

30.05.2013. Thereafter, the revision petition preferred by the petitioner being Revision Case No. 13 of 2013 was also dismissed by the respondent no.

2 vide order dated 11.01.2016. All the aforesaid orders have been challenged by the petitioner in the present writ petition.

3. The learned counsel for the petitioner submits that the driver of the vehicle was carrying stones under a valid challan and the same were loaded

from legitimate quarry of one Rajendra Sahu situated at Pahra Pandey Kully, P.O.- Howai, District- Hazaribagh. It is further submitted that the

criminal case filed against the driver and cleaner of the vehicle being Keredari P.S Case No. 4 of 2009 has ended in their acquittal. It is also submitted

by the learned counsel for the petitioner that the petitioner being the owner of the said vehicles was not having personal knowledge regarding loading

of stones over the same by the driver and cleaner.

4. Per contra, the learned counsel for the respondents submits that the courts below vide impugned orders have given concurrent finding of facts

which do not require any interference of this Court under extraordinary writ jurisdiction. The stones were being transported from Plot No. 1 of Pagar

notified protected forest without the approval of the competent authority which was an offence under Section 33(b)/41/42 of the India Forest Act,

1927. The Beat Officer, Barkagaon Forest Area conducted the spot enquiry of the occurrence with the help of village map and also surveyed the area

in which the said offence was found to be true. The petitioner had not taken proper precaution against the use of his vehicle in commission of the

forest offence. The challan so produced by the petitioner was treated to be forged and fabricated as the same was not produced before the forest officials at the time of seizure. If at all the seized stones had been extracted from a mining lease hold area with a valid challan, nothing prevented the driver to produce the same before the forest officials at the time of seizure itself. In fact, the challan was produced by the petitioner after a lapse of two years which clearly indicates that the same was manufactured one. The learned counsel for the respondents further submits that the confiscation proceeding is distinct from the criminal trial conducted for commission of a forest offence and thus the outcome of the criminal case has no bearing on a confiscation proceeding. On the one hand, the petitioner has stated that he had no knowledge of transportation of the stones by his vehicle and on the other hand, he has contended that the stones were being transported by a valid challan. Thus, both the statements are contrary to each other which do not appear to be believable. Hence, the present writ petition preferred by the petitioner is liable to be rejected.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. The main submission of the learned counsel for the petitioner is that the seized stones were being transported by a valid challan issued from the quarry of one Rajendra Sahu and as such, the courts below should have released the vehicle in his favour. The petitioner had produced the said challan in the confiscation proceeding itself before the respondent no. 4, however, the same was not accepted observing that it was a forged and fabricated document. While giving such finding, the respondent no. 4 did not record any reason as to how he came to such a conclusion. Such suspicion on the genuineness of the challan was raised by the respondent no. 4 merely due to the fact that the same was produced before him after a long time.

7. I am of the considered view that producing the challan for the first time before the respondent no. 4 in the confiscation proceeding cannot be a ground for outrightly ignoring the existence of the challan. The respondent no. 4 ought to have verified the genuineness of the challan from the issuing authority and was required to record a specific finding to that effect. If a person produces any document in support of his evidence so as to controvert

the allegation, the authority adjudicating the issue is required to make due verification of the same and thereafter to pass an appropriate order. The

appellate as well as revisional court authorities also did not appreciate the said issue. Moreover, even if it is assumed that the petitioner was having

knowledge of the transportation of the stones by his vehicle, the same cannot be a ground for not accepting the challan produced by the petitioner

during the confiscation proceeding as it is a general practice that while making out the points of defence, all possible grounds are taken by an

aggrieved person. However, mere fact that one defence is contrary to other may not be a cogent reason to reject all the points of defence taken by a

person.

8. Thus, non-acceptance of the challan by the confiscating authority, appellate authority as well as the revisional authority merely due to the reason

that the same was produced belatedly do not appear to be proper and legal. Hence, all the impugned orders cannot be sustained in law. Accordingly,

the impugned orders dated 11.01.2016, 30.05.2013 and 18.07.2011 passed by the respondent nos. 2, 3 and 4 respectively are quashed and set-aside.

9. The respondent authorities are directed to release the tractor bearing registration number JH-02K-4759 and trailer bearing registration no. JH-02K-

6456 in favour of the petitioner.

10. The present writ petition is accordingly allowed.