
(1983) 04 AHC CK 0019
In the Allahabad High Court
Case No : Criminal Revision No. 113 of 1983

Ravi Shanker and Another	Vs	APPELLANT
The State of U.P.		RESPONDENT

Date of Decision : 06-04-1983

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 452(2), 457
Forest Act, 1927 — Section 26, 5, 52, 53, 55

Citation : (1983) 7 ACR 227

Hon'ble Judges : K.N. Misra, J

Bench : Single Bench

Advocate : Jagat Bahadur Srivastava and B.S. Nigam, for the Appellant;

Judgement

K.N. Misra, J.—A joint application was moved by the revisionists Ravi Shankar and Sot. Inderjeet Kaur for the release of truck No. UTE 7959 on the ground that there is no provision for seizure of the truck and fire-wood loaded thereon, under the Forest Act. This application has been rejected by the Judicial Magistrate Ist, Bahraich, vide order dated 25-2-1983. Aggrieved by this order the revisionists preferred this revision.

2. Briefly stated the facts of the case are that a report dated 7-2-83 was submitted to the Court by one Ram Daras Singh, Forestor, Chandra Range, P.S. Nawabganj, district Bahraich. It was stated that on 5-2-83 at about 4 A.M. truck No. UTE 7959 was seized by him while it was carrying wood said to have been illegally felled and removed from the reserve forest. There were no valid papers for the transportation of the wood which was loaded on the aforesaid truck at the time it was apprehended, and stopped. It is alleged that two persons, viz. Kripa Ram and Sabit Ram scaped after jumping from the said truck but two other persons could not escape. They were apprehended. One of the apprehended persons namely Ravi Shankar applicant, claimed to be Driver of the truck while the other person, namely, Jeet Bahadur Singh claimed to be Cleaner of the truck. They were arrested at the spot and were handed over at police station

Nawabganj where the first information report was lodged.

3. In this application for release of truck Ravi Shankar claimed release of the truck being Driver of the truck, and Smt. Inderjeet Kaur claimed to be owner of the same. Ravi Shankar claimed to be engaged in transporting the fuel wood at the instance of the Contractor Kripa Ram from Nanpara to Nawabganj and there was proper transit pass for transporting the wood. The affidavit accompanying said application was, however, not verified as has been observed in the impugned order. The applicant also filed photo-stat copy of the alleged transit pass and the bill form. The application was contested on behalf of the Forest Department and it was alleged that the said truck loaded with fuel wood was caught on 5-2-83 at about 4 a.m. in Nimnihara Forest outpost. The truck was coming from inside the forest area. It was further alleged that movement of trucks to and from the reserve forest area could not be made before sun rise and after sunset. It was further alleged that the alleged transit pass is a forged paper. The transit passes are issued only for the period from sun rise to sunset and can be used during that period for transporting wood from the reserve forest area. The name of the Contractor Kripa Ram was also not mentioned in the transit pass and besides that the name of other Contractor Abdul Shami was mentioned. It was further alleged that the alleged pass is only for persons who take auction in lots and there is no property mark on the wood in question. It was further stated that the release application for the truck has not been given by its owner. Apprehension was also shown that if the truck is released, which is liable for disposal at the time of final decision of the case.

4. Learned Counsel for the applicants contended that the seized truck cannot be confiscated as there is nothing on the record to indicate that it was used in committing a forest offence, in respect of any forest produce. He referred to Section 52 of the Indian Forest Act and contended that when there is reason to believe that a forest offence has been committed in respect of any forest produce then in that event such produce together with the vehicle used for committing such offence may be seized by any Forest Officer or police officer. Learned Counsel contended that in the present case seizure of the truck was itself illegal because it is not established that any forest offence was committed in respect of any "forest produce". This argument is not available to the revisionists at this stage because evidence has yet to be recorded in the case and during trial it has to be established whether the wood, which was loaded on the truck in question, was of the reserve forest or not. It is not disputed that the truck was loaded with the firewood and that it was coming from inside the reserve forest area during odd hour at 4 a.m. when according to rule, trucks cannot ply before sunrise and after sunset to and from the reserve forest area. The fire wood, which was loaded on the truck, was claimed by the driver to be belonging to the Forest Contractor Kripa Ram, who has not come forward as yet to claim the property and so it cannot be said at this stage that the wood in question was legally felled and was legally transported under valid permit. In these circumstances, there could be a reason to believe that a forest offence has been committed in respect

of the forest produce in question and the forestor Ram Daras Singh, therefore, cannot be said to have acted illegally in seizing the truck and the fire-wood loaded thereon.

5. The next question to be considered is whether the property seized will be liable to confiscation or not. Section 55 of the Forest Act provides that all timber or forest produce which is not the property of the Government and in respect of which a forest offence has been committed, and all tools, boats, carts and cattle in committing any forest offence shall be liable to confiscation. Sub-section (2) of Section 55 further provides that such confiscation may be in addition to any other punishment prescribed for such offence. The word "carts" used in Section 55 was substituted by the word "vehicles" by U.P. Act 21 of 1960 with effect from 2nd Nov. 1960. There thus remains no doubt that the vehicle in question will be liable to confiscation.

6. Learned Counsel, however, contended that u/s 55 of the Act only the property belonging to the accused is liable to confiscation in addition to any other punishment prescribed for the offence. His argument was that since it is not the case of the prosecution that the truck in question belongs to the persons who were arrested at the spot and who are being prosecuted for the forest offence committing under the Act and as such it is liable to be released to its owner and will not be liable to confiscation all because owner of the truck is not being prosecuted in the present case. I am unable to agree with this contention. This question came up for consideration in a decision of Nagpur High Court in *Emperor v. Mohamad Khan* 39 CriLJ 1938 page 700 wherein it was held:

Almost all forest offence are committed by servants, grazing offences by the graziers of large cattle owners or graziers hired by a community of small owners, and thefts of timber by forest contractors or by Malguzars are ordinarily committed not by the contractor or Malguzars with their own hands but by their servants and it is because the servants are caught and masters escape that the salutary provision has been introduced that not only all produce in respect of which the offence is committed may be seized and confiscated but also tools, boats, carts or cattle used in the commission of any such offence. These tools, boats, carts or cattle will ordinarily belong to the master and not to the servant, and although it is the servant and not the master who is convicted of the crime, it is on the master, if the appeal which he has the right to make u/s 59 of the Forest Act fails, on whom some punishment rightly falls. While tools, boats, carts and cattle may be instrumental in cases of theft of forest produce, it cannot be disputed that cattle are also instrumental in the theft of grass which ate and in the damage to grass and young trees which they cause in grazing; and an offence u/s 26(d) is as much an offence as the illicit removal of timber, and cattle used in committing such an offence are as much liable to confiscation as cattle drawing a cart containing illicitly felled timber.

It was further observed that:

The word used in "confiscation" and not, as in the Penal Code, "forfeiture". Forfeiture can only relate to the property owned by the person concerned, but property may be confiscated from the possession of anyone, whether he is the owner thereof or not. The owner of the property confiscated, be he an offender under the Forest Act or not, has a right to appeal against the order of confiscation, and it is in the discretion of the Court to which the appeal is made whether the order of confiscation shall or shall not be set aside.

7. I am in respectful agreement with the view taken in the aforesaid decision. The power of confiscation of the vehicle used in committing any forest offence can be exercised not only where the owner is charged of the offence but also where the servant or the truck driver or cleaner are prosecuted for the same. Under Sub-section (2) of Section 55 confiscation of the vehicle may be made in addition to any other punishment prescribed for the offence. If the argument of the learned Counsel is taken to be correct that confiscation of the vehicle can only be made only in those cases where the owners of the vehicle are prosecuted and convicted, there would be reason for providing in Section 59 that any person claiming to be interested in the property so seized, may, within one month from the order passed under Sections 55, 56 or 57, appeal therefrom to the Court to which orders made by such Magistrate are ordinarily appealable, and the order passed on such appeal shall be final. A bare perusal of Section 59 indicates that any person claiming to be interested in the property so seized can file an appeal against the order of confiscation of the seized property. This clearly indicates that it is not correct to say that the confiscation can be made only where the owner of the vehicle is prosecuted and sentenced and that the property seized cannot be ordered to be confiscated where it is seized from the possession of the Driver. The confiscation can be made in both the eventualities and the owner can file an appeal-See 1978 CriLJ 204, wherein it was held that:

Since it is not the duty of Courts hearing criminal cases to enquire into and give a finding with regard to the ownership of the property seized by police for disposing it of u/s 457, Code of Criminal Procedure, where there is no investigation on a complaint or prosecution, the normal rule to be followed is to hand it over to the person from whose possession it was obtained or who should be deemed to be in possession of it. Where there were grave doubts about the claim of a person in whose name the car seized by the police remained registered and he had not preferred any complaint in that regard and there was no investigation or prosecution by the police, held, that it was proper to hand it over to the person from whose possession it was seized....

8. Having carefully considered the matter, I am of the view that the power rests in the Magistrate to make an order during inquiry or trial of the case with regard to the releasing the property seized u/s 5. of the Indian Forest Act. When such power of releasing the property vests in the Forest Officer, as is envisaged u/s 53 of the Forest Act, I find it difficult to agree with the learned Counsel for the State that such power of release of the seized property against the confiscation order

although he was not prosecuted or convicted in the offence, and his servants are prosecuted for the offence charged.

9. Learned Counsel for the Petitioner next contended that although the vehicle in question be taken to be liable for confiscation but it could be released to the owner of the property even during trial. Referring to Section 53 of the Forest Act learned Counsel contended that even the Forest Officer of the rank of Ranger can release the property seized u/s 52 on execution of the owner thereof a bond for the production of the property so released if and when so required on account of which seizure has been made. Although this remedy was not availed of by the owner of the vehicle, learned Counsel contended that the Magistrate can also be said to be with power of releasing the seized property during trial. The learned Counsel further referred to provisions u/s 457 of the Code of Criminal Procedure 1973 and submitted that the Magistrate can make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. He drew my attention to a decision of this Court reported in *Dakhini Prasad Srivastava v. (? omission as is in certified copy of the High Court)* property u/s 52 of the Forest Act cannot be exercised by a Magistrate, during inquiry or trial. Such release of the property will be made subject to the condition that the same will be produced by the person in whose custody it is released at the time of the decision of the case or as and when required by court during trial, because such seized property, as already observed above, will be liable to confiscation in addition to any other punishment prescribed for the offence is awarded. The property will be released and handed over in the custody of the person who would be entitled to possession thereof. If the person so entitled is not known the Magistrate can have recourse to provision of Sub-section (2) of Section 452 of the Code of Criminal Procedure. It has been held by the Supreme Court in *Ram Parkash Sharma Vs. State of Haryana*, that the court has power to release the property seized from any person in connection with any trial. In this view of the matter I find that the Magistrate can very well proceed to determine the question regarding release of the truck seized u/s 52 of the Forest Act.

10. A perusal of the impugned order indicates that the Magistrate has failed to exercise the power of releasing the seized vehicle on altogether erroneous ground that the property cannot be released because the case is still under investigation and the accused Sabit Ram is still at large and that no one has so far approached the Court to prove its ownership to the wood. There also appears to be no justification for taking the view that any order of release of the truck would further mar the chances of successful investigation of the case and the truck (? would) not come in the hands of the Court again. I am constrained to observe that this view taken by the learned Magistrate is altogether erroneous. The seized truck would not be taken to go out of the hand of the Court if it is ordered to be released and given in custody of a person on his furnishing adequate security for producing the truck in question before the Court as and

when required. In the event of failure to produce the truck by such person as and when ordered by the Court the security furnished can be confiscated and proper action can be taken in that behalf against such person holding the property in his custody as per directions of the Court during trial of the case.

11. In the result the revision succeeds and is hereby allowed. The impugned order dated 25-2-1983 passed by the Judicial Magistrate I, Bahraich is hereby set aside and he is directed to decide the application for release according to law and in the light of the observations made above. No order as to costs.