

(1991) 08 MP CK 0008

In the Madhya Pradesh High Court

Case No : Criminal Rev. No. 163 of 1991 & Criminal Revision No. 163 of 1991

Rishi Nath Singh

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 29-08-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 167(2), 451, 457, 482

Forest Act, 1927 — Section 26, 52(3), 52C

Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 — Rule 9

Madhya Pradesh Forest (Amendment) Act, 1965 — Section 52(4), 52C, 54

Madhya Pradesh Land Revenue Code, 1959 — Section 162

Penal Code, 1860 (IPC) — Section 186, 34, 353, 379

Citation : (1992) CriLJ 1764 : (1992) 37 MPLJ 159

Hon'ble Judges : K.L. Issrani, J

Bench : Single Bench

Advocate : V.K. Tankha, for the Appellant; B.M. Dwivedi, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Issrani, J.

The present revision-petition is against the order dated 6-4-1991 passed by the Chief Judicial Magistrate, Raisen, in Criminal Case No. 688/90, whereby the application of the applicant for releasing his truck on Supurdgi was rejected on the ground that the Court had no jurisdiction.

The truck in question was seized by the Forest Department on 8-12-1990 on account of carrying about 35 stones, which, according to the prosecution is a forest produce. But anyhow, the applicant was able to take away his truck from the custody of the Forest Department. Therefore, on 8-12-1990, the Forest Department lodged a report in the police station, Raisen to this effect, which is Annexure A-1. On this the police registered a case u/s 353 and 186 read with Section 34 of the Penal Code against the applicant.

In this case, the applicant, along with other co-accused, was bailed out on 23-12-1990 but according to the applicant, on receiving oral requisition of the truck from the police, the police made a formal seizure of the truck for an offence under Sections 353 and 186 read with Section 34, IPC. To this, a further section was also added as Section 379, IPC. ON the same day, the applicant moved an application u/s 451/457, Cr. P.C. for custody of the truck No. MPD 9007. On the same day also, an application was moved by the Forest Range Officer informing the Court of C.J.M. that a forest offence u/s 26 of the Forest Act has been registered against the applicant. The vehicle was connected with the forest offence and the confiscation proceedings cannot be initiated against him. It was also submitted that the criminal Court had no jurisdiction in the matter u/s 52-C of the Forest Act. Therefore, the trial Magistrate by order dated 31-12-1990 rejected the application of the applicant. Aggrieved by this, the applicant had filed a revision petition before the Court of Sessions Judge, Raisen, which was also rejected on 24-1-1991. Thereupon, the applicant filed a writ petition before this Court challenging those orders. The writ petition (M.P. No. 473/91) was allowed. The orders dated 31-12-1990 and 24-1-1991 were set aside and it was directed that the Magistrate should give a decision upon the application of the applicant for Supratnama in view of the observations made therein by this Court on 21-3-1991 (Annexure A-6), but again the application of the applicant for giving the truck to him on Supurdgi has been rejected by the impugned order passed by the C.J.M., Raisen. Hence this revision petition.

The submission of the learned counsel for the applicant is that in view of the provisions of Section 52-C of the Forest Act, the Court loses its jurisdiction only if the intimation of confiscation proceedings are given to the Court and not otherwise. On the date on which the application was given, the Court had jurisdiction as the proceedings were initiated by the police. Accordingly, after the order was passed by this Court in writ petition, the Court ought to have considered the position as on the date of the application. On that day, there being no intimation to the Court by the Forest Department for confiscation of the truck, the valuable right had vested in favour of the applicant for release of the truck. Learned counsel for the applicant had also given an example of Rule 9 of the Madhya Pradesh Civil Services (Classification, Control and Appeal) Rules, 1966 wherein after the period of 45 days the suspension order automatically stands revoked. The other instance given is that of Section 167(2) Cr. P.C. where after the period of expiry, accused becomes entitled to be released on bail. The learned counsel has also submitted that no one should suffer for the mistake of the Court.

The learned counsel for the non-applicants has relied on the principles laid down in Babulal Lodhi Vs. State of Madhya Pradesh and Another, and Kanhaiyalal v. State of M.P. 1988 Jab LJ 94 : 1987 Cri LJ 368 and his submission is that after the property is seized by the Forest Department, the Criminal Court has no jurisdiction to release the truck seized u/s 451 or 457, Cr. P.C.

This Court in writ petition (M.P. No. 473/91) had considered the fact that the proceedings for confiscation were commenced by the notice dated 7-3-1991. But the Court was of the view that it was still open to the authorities despite registration of forest offence, either to initiate or not to initiate the proceedings for confiscation of the property. It was also held that a perusal of the order of the Magistrate does indicate that registration of the forest offence was sufficient to oust his jurisdiction in the matter. But it was directed that the Magistrate had to take a decision whether he had received intimation as to the initiation of the proceedings for confiscation of the property. Thereafter the trial Magistrate has passed the impugned order, which is a very detailed order. The direction was given by the Chief Judicial Magistrate for the production of the truck before forest authorities. It was ordered that the truck be handed over to the Forest Department for dealing with it u/s 52(3) of the Act.

It is to be seen that the challan was filed on the first information report lodged by the Forest Department on 8-12-90 in which it was complained that after seizure the driver of the truck flew away with the truck. Therefore, the police had registered crime Under Sections 353, 186 read with Section 34, IPC. Thereafter Section 379, IPC was also added because of the theft of the truck. No doubt, the bail was granted to the accused persons in that case on 23-12-90, but the truck was seized on 25-12-90 and the challan was filed on 26-12-90. An application u/s 451/457, Cr. P.C. was moved by the applicant. But on the same day the Forest Range Officer had also filed an application (Annexure-A-5) stating that the truck may not be given on Supurdgi to the applicant, but be made available to the forest authorities for taking action under the Forest Act. Because of this, the application of the applicant was rejected on 31-12-1990 and his revision was also dismissed on 24-1-1991. Against this, petition u/s 482, Cr. P.C. lay to this Court, but the applicant chose to file the writ petition, in which the earlier orders dated 31-12-90 and 24-1-91 were quashed and it was directed that the application be decided afresh.

Now the clinching question to be decided in this case is as to whether on 6-4-1991 while passing the impugned order the Court had jurisdiction to release the truck in view of the intimation of seizure having been given on 26-12-90 and the intimation of confiscation proceedings given on 7-3-91. Even though the final order was passed by this Court in writ petition on 21-3-1991 (Annexure-A-6) and on 27-3-91, the property was confiscated u/s 54 (M.P. Amendment) of the Forest Act, Section 52-C (M.P. Amendment) Act bars the jurisdiction of the Court on receipt of the intimation under Sub-section (4) of Section 52 of the Act about initiation of proceedings for confiscation of the property. So it is to be seen as to whether on 6-4-91 the Court had jurisdiction to grant the application of the applicant u/s 451/457 Cr. P.C. The submission of the learned counsel for the applicant that his application being earlier, his right existing on that day should be considered while deciding the application.

The submission of the learned counsel for the applicant is devoid of any force

and cannot be accepted. By the earlier orders no right was acquired by the applicant. Even if it be so, the orders stood quashed in the later writ petition by him. In view of this, the legal proceedings started to acquire a right are not saved. In *Sidha Ahir Vs. Devidin and Others*, a distinction was drawn between legal proceeding for enforcing a right acquired or accrued and legal proceeding for acquisition of a right; the former is saved, whereas the later is not. In that case there was dispute about the acquisition of rights to certain lands by the parties u/s 162 of the M.P. Land Revenue Code, which was then in force. The Tahsil Court had allowed the application. After repeal of the section, the Board found that the application was not tenable and it was held that after repeal of Section 162 it gave no vested right to the applicant, and could not be considered after repeal of Section 162 the Court having no jurisdiction. The Court had relied on the earlier decision of Division Bench in *Dolumal Sunderdas Vs. State of Madhya Pradesh and Others*, Therefore, in my opinion, after the directions of this Court in writ petition the legal proceedings to acquire the vehicle on Supurdgi are not saved after the notice and intimation of confiscation of the seized truck under the provisions of Forest Act. Therefore, the Magistrate had no jurisdiction to deal and decide the application of the applicant for the same.

In *Babulal Lodhi Vs. State of Madhya Pradesh and Another*, (supra), it has been held by Division Bench of this Court that when the property is seized by Range Officer, the Magistrate had no jurisdiction to release the property. Similarly, in *Kanhaiyalal v. State of M.P.* 1987 Cri LJ 368 (supra), it has been held that when a truck is not seized by the police but by Forest Officer and it has not been produced before the Magistrate and as the applicability of Section 52-C of the Indian Forest Act is attracted, the Magistrate's jurisdiction with regard to making orders for interim custody of the truck is ousted.

It is submitted by the applicant himself in his memo of revision petition that the seizure of the truck by the police on 25-12-90 was only formal. If it is taken to be seizure, it was on the report of the Range Officer, who had complained that after seizure of the truck on 8-12-90 it was stealthily taken away from their custody, it is to be restored to their custody. That being so, initial seizure of the truck by the forest department on 8-12-90 and the subsequent notice dated 7-3-1991 ousts the jurisdiction of the Court u/s 52-C of the Act. Therefore, the order passed by trial Magistrate on 6-4-91 rejecting the application of the applicant holding that the applicant has not come to the Court with clean hands and that its jurisdiction is barred u/s 52-C of the Act, cannot be said to be illegal. The examples cited by the learned counsel for the applicant are not applicable in this case. No interference in this revision petition is called for.

In view of this, the revision petition has no force and is dismissed.