

(2012) 05 JH CK 0096

In the Jharkhand High Court

Case No : Writ Petition (Cr.) No. 179 of 2011

Rustam Ansari @ Md. Rustam Ansari

APPELLANT

Vs

The State of Bihar (Now Jharkhand) and Others

RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Forest Act, 1927 — Section 42, 52(1), 52(5)

Citation : (2012) CriLJ 4303 : (2012) 4 JCR 193 : (2012) 3 JLJR 113

Hon'ble Judges : Harish Chandra Mishra, J

Bench : Single Bench

Advocate : S.P. Roy and Ranjit Kumar, for the Appellant;

Final Decision : Allowed

Judgement

H.C. Mishra

1. Heard learned counsel for the petitioner and learned counsel to the respondents State. The petitioner has filed this application for quashing the order dated 29.06.2010 passed by the respondent No. 2, Revisional Author cum-Principal Secretary, Forest and Environment Department, Ranchi, (sic) Forest Case (C) No. 57 of 2009 whereby, the revisional authority ha upheld the order of confiscation of the truck of the petitioner. The petitions has also prayed for quashing the order dated 03.01.2005 passed by the confiscating authority i.e. the Divisional Forest Officer, Ranchi whereby, th(sic) truck of the petitioner bearing Registration No. CG 04 6556 was confiscate as it was found to be involved in the forest offence, as, 185 pieces of chira (sic) saal wood was recovered from the said truck of the petitioner. The confiscation order was challenged by the petitioner in appeal, bein Confiscation Appeal No. 13 R 15/2005-06, which was also rejected by the Appellate Authority-cum- Deputy Commissioner, Ranchi, by order date 17.12.2008, which is also impugned in this writ application.

2. The facts of the case lie in a narrow compass. On 16.05.200 the petitioner's

truck was seized loaded with 185 pieces of chiran saal woo and the driver of the truck was also apprehended, who informed that the wood were loaded on the truck at Sunita Saw Mills, Chainpur, Distri Gumla, which was being run by Mahmood Ali, and he was asked to wait ne(sic) petrol pump at Sidraul, Namkum, Ranchi. As no document of the wood w(sic) produced by the driver of the truck, the truck was seized by the Fore(sic) Officials under the provisions of Section 52 (1) of the Indian Forest Act an the case was instituted for the offence u/s 42 of the Indian Forest Act, wherein the petitioner has been made accused being the owner of the truck. Admittedly the petitioner was not apprehended along with the truck. It appears that the petitioner had faced the trial and he was convicted and sentenced for the offence u/s 42 of the Indian Forest Act by the Trial Court, being the Court of Sri D. K. Mishra Judicial Magistrate, 1st Class, Ranchi, by the Judgment and Order dated 19.01.2007 passed in Forest Case No. 27-A of 2004. The petitioner had challenged the said order in Criminal Appeal No. 32 of 2007 which was allowed by the learned A.J.C., Vth, Ranchi by order dated 17.01.2008 wherein, it has been held that on the basis of the evidence brought on record, though the occurrence was well established by the prosecution, but so far as involvement of the petitioner was concerned, it was only on the basis of the admitted fact that he was the owner of the vehicle. None of the witnesses had stated that the alleged chiran saal wood from the saw mill was being carried out without valid papers within the knowledge of the owner of the vehicle, even though the allegation against the petitioner was that he had given remuneration to the driver for carrying, the said chiran saal wood, the same could not be proved by the prosecution, and accordingly the learned Appellate Court held that the petitioner had no knowledge of the occurrence and he could not be convicted for the offence and accordingly, the judgment of conviction and order of sentence passed by the Trial Court against this petitioner, was set aside.

3. It appears that the confiscation proceeding was initiated with respect to the truck of the petitioner, being Confiscation Case No. 17 of 2004, by the competent authority and by order dated 03.01.2005 passed therein the truck of the petitioner bearing Registration No. CG 04 6556 was confiscated. The order passed by the competent authority has been brought on record as Annexure 2 to this application. The petitioner challenged the said order before the Appellate Court being the Deputy Commissioner, Ranchi, in Confiscation Appeal No. 13 R 15/2005-06, which was also rejected by the Appellate Court by order dated 07.12.2008, as contained in Annexure 5 to this application. The petitioner challenged the order passed by the Appellate Court, before the Revisional Authority-cum Principal Secretary, Forest and Environment Department, Ranchi in Forest Case No. (C) 57 of 2009 and the confiscation of the truck of the petitioner was maintained by the Revisional Authority as well, by order dated 29.6.2010, as contained in Annexure 7 to this writ application.

4. Learned counsel for the petitioner has drawn the attention of this Court towards Section 52 (5) of the Indian Forest Act submitting that there is prohibition of confiscation of the vehicle involved in the forest offence if it is

proved that the said vehicle was used in the offence without knowledge or connivance of the owner of the vehicle. Learned counsel for the petitioner has submitted that the petitioner had challenged the confiscation of his truck on the only ground that he had no knowledge about the offence being committed with his truck, still the truck of the petitioner was confiscated illegally. Challenging the impugned orders passed by the Original, Appellate and the Revisional Authorities, learned counsel submitted that in fact the petitioner was also convicted for the offence u/s 42 of the Indian Forest Act by the Trial Court, but he succeeded the appeal before the Appellate Court in Criminal Appeal No. 32 of 2007 wherein, by Judgment dated 17.01.2008 passed by the learned Additional Judicial Commissioner V, Ranchi, it was held that the prosecution had failed to prove that the petitioner had the knowledges the occurrence and the connivance of the petitioner in the occurrence also could not be proved as the allegation against the petitioner that he had paid the remuneration to the driver for transporting the saal wood could not to be proved by the prosecution and, accordingly, the petitioner was acquitted of the charge.

5. Learned counsel for the petitioner submitted that in view of the fact that the prosecution was not able to prove the knowledge or connivance of the petitioner in the commission of the crime, the confiscation order passed by the Original, Appellate and the Revisional Authorities cannot be sustained in the eyes of law in view of Section 52(5) of the Indian Forest Act.

6. On the other hand, learned counsel for the State has submitted that the from the show cause filed by the petitioner himself before the confiscation authority it would appear that the petitioner had the knowledge about the occurrence and, accordingly, there is no illegality in the confiscation of the truck of the petitioner.

7. Section 52 (5) of the Indian Forest Act (Bihar Amendment by Bihar Act 9 of 1990) reads as follows:-

"No order of confiscation under sub-section (3) of any tools, arms, boats, vehicles, ropes, chains or any other articles (other than the forest produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorised officer that any such tools, arms, vehicles, ropes, chains or other articles were used without his knowledge or connivance or as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of forest offence."

8. Thus, from bare perusal of the section 52 (5) of the Indian Forest Act, it is apparent that in absence of any proof that the vehicle was used without the knowledge or connivance of the petitioner, or as the case may be, without the knowledge or connivance of his servant or agent, the vehicle of the petitioner could not be confiscated. The fact remains that the petitioner was convicted and the sentenced for the offence u/s 42 of the Indian Forest Act, but he has been acquitted by the Appellate Court below in Criminal Appeal No. 32 of 2007

wherein, It was found that neither the knowledge nor his connivance in the commission of the offence could be proved by the prosecution. It appears from the impugned orders that there is nothing to prove beyond all doubts, either the knowledge or connivance of the servant or the agent of the petitioner, in commission of the offence. In view of the aforementioned discussions, since the connivance or knowledge of the petitioner or his servant or agent in commission of the crime could not be proved, in my considered view, the confiscation orders passed by the authorities concerned cannot be sustained in the eyes of law. Accordingly, the confiscation order dated 03.01.2005 passed by the Original Authority in Confiscation Case No. 17 of 2004, the order dated 07.12.2008 passed by the Appellate Authority in Confiscation Appeal No. 13 R 15/2005-06 and order dated 29.06.2010 passed by the Revisional Authority in Forest Case (C) No. 57 of 2009, as contained in Annexures 2, 5 and 7 to this writ application are hereby, quashed and the respondents are directed to release the confiscated truck bearing Registration No. CG 04 6556, in favour of the petitioner forthwith. With the directions as above, this writ application is hereby, allowed.