
(2012) 04 JH CK 0200
In the Jharkhand High Court
Case No : Writ Petition (C) No. 7622 of 2011

Sandeep Saluja

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-04-2012

Acts Referred:

Constitution of India, 1950 — Article 300A
Penal Code, 1860 (IPC) — Section 33, 41, 42

Citation : (2012) 04 JH CK 0200

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : B.K. Dubey, for the Appellant;

Final Decision : Allowed

Judgement

Narendra Nath Tiwari

1. The petitioner is aggrieved by and has prayed for quashing order dated 12.10.2011 (Annexure 6) passed by Secretary, Forest and Environment Department, State of Jharkhand, in Criminal Revision No. 74 of 2010 whereby the said Secretary has set aside the order passed by D.C., Koderma in Confiscation Appeal No. 02 of 2008. The facts of the case is that the petitioner is the owner of commercial truck bearing registration no. JH 12A/6751 and the same was seized on the allegation that illegal Mica was loaded on the truck. The case was registered under Sections 33,41 and 42 of the Indian Forest Act. A criminal case was also instituted on the said allegation. According to the report filed by the Range Officer, he had seen the truck in question loaded with Dibra Mica. One Prakash Modi and Md. Anamul were escorting the said truck. When the informant tried to stop the truck, the driver of the said truck escaped with speed. Thereafter the forest officer arranged a jeep and chased the truck. The truck was caught at Bariadih Forest Naka. The truck driver however succeeded in running away. The truck was seized with Dibra Mica and was brought to the Bariadih Forest office. It was alleged that the Dibra Mica was brought from Plot No. 358

and 362, which is forest land, within forest area. It was further alleged that the owner of the vehicle was also involved as he has given his vehicle for illegal transportation of forest produce.

2. The petitioner pleaded innocence and stated that he has been falsely implicated in this case only because he happens to be the owner of the vehicle and had given his commercial vehicle on hire to one Prakash Modi, who is a registered dealer of Mica. It has been further stated that the vehicle was not seized from the forest area and the petitioner has no concern with the commodity in question. He was not present at the place of occurrence. The petitioner's truck was also not recovered from the forest area. There is no evidence on record to prove that the alleged Mica was loaded in forest area. The entire prosecution case is based on conjecture and surmises and no cogent evidence was adduced to substantiate the said allegations. It has been stated that the petitioner has been deliberately implicated after instituting the case which is an after-thought with ill motive. Prakash Modi, who had taken the truck on hire has claimed that the Mica loaded on the truck is supported by valid document and he had got the mica loaded. Though there was no valid ground, the Forest Officer-cum-Divisional Forest Officer, Koderma without any legal evidence passed arbitrary and illegal order dated 10.11.2008 directing confiscation of the petitioner's vehicle.

3. The petitioner preferred appeal against the said order before the Appellate Authority-cum-D.C., Koderma, which was registered as Confiscation Appeal No. 2 of 2008. Learned Appellate Authority, after hearing the parties and thoroughly considering the facts and materials on record allowed the petitioners appeal and set aside the order passed by the Authorized Officer-cum-Divisional Forest Officer, Koderma by his order dated 29.09.2009.

4. The respondent thereafter filed revision before the Secretary, Forest and Environment, Government of Jharkhand (Respondent No. 2) being Revision Case No. 74 of 2010.

5. The said respondent no. 2 without discussing the facts and materials on record and without meeting the speaking reasons recorded by the appellate authority, set aside the order passed in appeal and restored the order of the authorized officer-cum-Divisional Forest Officer.

6. The petitioner has challenged the order of the Secretary, Forest and Environment (respondent no. 2) on the orders passed by the different authorities.

7. On perusal of the order of the Authorized Officer as well as the order of Secretary, Forest and Environment passed in Revision, I find that the orders are not supported by any valid evidence and cogent reasons. The same has been passed only on mere conjectures and surmises.

8. Learned Appellate Authority-cum-D.C., Koderma has considered the facts and thoroughly appreciated the evidence and material on record. He has found that

the patrolling party managed a jeep to chase the truck. Obviously Jeep was not with the the patrolling party. It was not near the alleged site of illegal mining nor did it see the truck being loaded with Mica scrap at the alleged site. The truck was seized at Bariadih forest check post on Koderma-Giridih Road. The truck was not loaded with the Mica scrap at the alleged site. He has also found that the action of the seizure is based on surmises and conjecture and the allegation could not be proved beyond reasonable doubts.

9. In Mahesh Kumar Aahuja Vs. The State of Jharkhand and Ors. reported in 2008 (2)JLJR 17, this Court has held that the Confiscation of an article is deprivation of property, Right to property is a valuable right of a citizen. Article 300A of the Constitution prohibits deprivation of property save by authority of law, confiscation of the property of a citizen cannot be made wantonly and casually unless there is cogent evidence on record to substantiate the allegation of violation of some provisions of law.

10. In the present case, after detailed discussion of the relevant facts and materials on record, the Deputy Commissioner, Koderma cum Appellate Authority has rightly held that the conclusion of the Forest Officer is based on conjecture and surmises. I find that no evidence on record to prove that the material which has been seized was mined from the forest land. The same is a mere suspicion inferred by the authority from the alleged escape of the driver of the truck. The suspicion however strong cannot be a substitute of legal evidence. The conclusion drawn by the Authorized Officer as well as by the Revisional Authority (Secretary, Forest and Environment) being based on mere suspicion and assumption cannot be a legal basis for holding the petitioner guilty of committing forest offence.

11. In view of the above the finding of the Authorized Officer cum Divisional Forest Officer as also of the Revisional Authority are thus perverse and unsustainable and the same are quashed. The order of D.C., Koderma for the aforesaid reason is upheld and restored. The writ petition accordingly stands allowed.