
(2015) 01 JH CK 0092

In the Jharkhand High Court

Case No : Writ Petition (C.) No. 5705 of 2014

Sane Baza Ansari

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Forest Act, 1927 — Section 33, 52(4)(d), 59

Penal Code, 1860 (IPC) — Section 34, 414, 420, 467, 468

Citation : (2015) 5 FLT 221 : (2015) 3 JLJR 130

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Praveen Shankar Dayal, for the Appellant; Rajiv Ranjan Mishra, G.P. II, Advocates for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 15.4.2014 in Confiscation Case No. 39 of 2013, the petitioner has preferred the present writ petition. Briefly stated, Barhi P.S. Case No. 110 of 2013 was registered for offence under sections 414, 467, 468, 471 and 420 read with section 34, I.P.C. and under section 33 of the Indian Forest Act. The petitioner is the registered owner of the truck bearing No. JH 02 J 9721 which was apprehended and found loaded with coal. The said truck was engaged by one B.D. Enterprises, Hazaribagh for transportation of coal from Kathara area Jarangdih, for which invoices, necessary permits and challans were issued. The Authorised Officer-cum-Divisional Forest officer initiated a confiscation proceeding in which notice was issued to the petitioner who filed his reply on 11.1.2014. The respondent No. 2 thereafter, without providing opportunity of hearing in terms of section 52(4)(d) of the Indian Forest Act, passed order dated 15.4.2014 holding that the trucks bearing No. JH 02J 9721 was involved in illegal transportation of coal under the cover of false document so as to disguise and deceive the lawful authority of department. A case for offence under section 33 of the Indian Forest Act has been lodged and accordingly, the said truck was confiscated.

2. The learned Counsel appearing for the petitioner refers to paragraph Nos. 15 and 27 of the writ petition and submits that without affording an opportunity of hearing which is a mandatory requirement under section 52(4)(d) of the Indian Forest Act, 1927, the impugned order dated 15.4.2014 has been passed and therefore, it is liable to be quashed. It is further submitted that in the notice issued to the petitioner neither any description of the area from where the forest produce has been illegally taken away nor the notification under which the said area has been declared a forest area has been brought on record still, a proceeding under section 33 of the Indian Forest Act, 1927 has been initiated which is not permissible in law.

3. Mr. R.R. Mishra, the learned G.P. II for the respondent-State of Jharkhand raises preliminary objection as to the maintainability of the writ petition on the ground of availability of alternative remedy.

4. To a pointed quarry, in view of the provision of appeal under section 59 of the Indian Forest Act, 1927 how this writ petition is maintainable, the learned Counsel appearing for the petitioner submits that since the impugned order dated 15.4.2014 has been passed in violation of the principles of natural justice, the present writ petition is maintainable.

5. No doubt, in cases where an order has been passed without affording opportunity of hearing, a writ petition can be entertained by the Court, even though the petitioner has alternative remedy however, I am of the opinion that such are the exceptional cases in which the Court entertains the writ petition.

6. The petitioner was issued a show-cause notice and he submitted his reply, is not in dispute. This is not a case in which an order has been passed without even issuing a show-cause notice to the petitioner. I do not find any exceptional circumstance warranting interference in the matter for entertaining the present writ petition. Merely because the petitioner asserts that an opportunity of hearing as required under section 52(4)(d) of the Indian Forest Act, 1927 has not been given to him, the writ petition cannot be entertained. The petitioner has not pleaded the prejudice caused to him. The plea taken by the petitioner in the writ petition can be adjudicated by the appellate authority. In view of the alternative remedy of appeal under section 59 of the Indian Forest Act, 1927, the present writ petition is dismissed as not maintainable however, with a liberty to the petitioner to approach the appellate authority within a period of 4 weeks and if the petitioner prefers an appeal, the same would be considered on its own merit. The petitioner is also at liberty to raise all the pleas which have been raised by him in the present writ petition. Since this Court has not expressed any opinion on the merits of the case, dismissal of this writ petition would not prejudice the case of the petitioner before the appellate authority.