
(2005) 11 MP CK 0087

In the Madhya Pradesh High Court

Case No : Writ Petition No. 848 of 1996

Sarjoo Prasad Choudhary

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2006) 2 MPLJ 65 : (2006) 2 RCR(Civil) 447 : (2006) 2 RCR(Criminal) 629

Hon'ble Judges : A.K.Shrivastava, J

Bench : Single Bench

Advocate : D.K. Dixit, for the Appellant; Vinod Mehta, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.K. Shrivastava, J.

By this petition under Articles 226 and 227 of the Constitution of India, the petitioner has assailed the orders Annexure-P-5 dated 14-3-1995 passed by respondent No. 4, Annexure-P-6 dated 21-7-1996 passed by Conservator of Forest, Jabalpur and Annexure-P-7 dated 26-12-1995 passed by III Additional Sessions Judge, Jabalpur. By these orders impugned tractor and trolley of petitioner Sarjoo Prasad has been directed to be confiscated.

It is no more in dispute that petitioner is the owner of impugned tractor and trolley No. MPQ 3009 which was seized by the forest authorities ad-idem 19-1-1995. On that day tractor and trolley was sent by the petitioner to village Basadi for some agriculture work and the same was driven by driver Ashok Kumar. When the tractor was returning from village Basadi, residents of village Khirahani stopped the same and requested the driver to load their Jarwa and Geda (thorns) to carry the same to their village. The tractor and trolley was seized by the forest authorities and seizure memo Annexure-P-1 was prepared

indicating therein that wet fuel wood, Jarwa and tractor and trolley were seized. In Annexure-P-2 which is a show cause notice it has been mentioned that 57 Ballis and 7 bamboos were seized from impugned tractor and trolley. The petitioner refuted the averments made in the show cause notice (AnnEx. P-2) and thereafter the evidence was recorded.

In order to prove his case u/s 52(5) of the Indian Forest Act, 1927 (for brevity, "the Act") petitioner examined Ashok Kumar (driver of the impugned tractor and trolley), Raju Koal and Batti. Apart from these witnesses, petitioner examined himself. On behalf of the forest department, the Seizing Officer Vimal Vansh Mishra, Forester and K. K. Sharma, Forest Ranger were examined. The authority constituted under the Act after marshalling the evidence on pages 18 and 19 of its order categorically held that the seizure memo is doubtful. The authority further came to hold that since seizure memo is doubtful, therefore, commission of offence has also become doubtful. On page 19 the authorised Officer came to hold that impugned tractor and trolley was used in committing the forest offence, is also doubtful. However, ultimately the authorised officer directed to confiscate the tractor and trolley of the petitioner.

The contention of Shri Dixit, Learned Counsel for the petitioner is that once the authorised officer has come to the conclusion that seizure memo is doubtful and it is also doubtful that tractor and trolley was used to commit the forest offence, the impugned order AnnEx. P-5 passed by the respondent No. 4 directing to confiscate the impugned tractor and trolley is wholly unwarranted under the law. Learned Counsel for the petitioner has also invited my attention to the order passed by the appellate authority under the Act (AnnEx. P-6) that the appellate authority too came to the conclusion that the owner of the vehicle i.e. petitioner was not having any knowledge or connivance that his vehicle is being used to commit the offence under the Act. According to the Learned Counsel since there is concurrent finding of fact recorded by the two authorities constituted under the Act that it was not in the knowledge of the petitioner that his vehicle is being used to commit the forest offence and the seizure is also doubtful, therefore, the learned revisional authority ought to have allowed the revision and impugned tractor and trolley ought to have been released from the confiscation. The contention of Learned Counsel is that the revisional authority has dismissed the revision contrary to section 52(5) of the Act. Thus on the basis of these premised arguments it has been contended that the impugned tractor and trolley be released from confiscation.

Refuting the aforesaid submissions of Learned Counsel for the petitioner, it has been argued by Shri Mehta, learned Government Advocate that in the impugned tractor and trolley forest produce was found which was seized and, therefore, the authorities as well as the revisional Court did not err in passing the order against the petitioner and, therefore, this petition be dismissed.

After having heard Learned Counsel for the parties, I am of the view that this petition deserves to be allowed.

The authorised officer constituted under the Act (respondent No. 4) has categorically held that seizure memo of the alleged forest produce is doubtful. In that regard the authorised officer has placed reliance on Annexures-P-1 and P-2. AnnEx. P-1 is the seizure memo wherein the seizure of wet fuel wood, Jarwa (thorns) and the impugned tractor and trolley has been shown. While as per show cause notice issued by the authorised officer dated 23-1-1995 (AnnEx. P-2) 57 Ballis, 7 bamboos and two stacks of fuel wood were seized along with the impugned tractor and trolley. Thus according to the authority seizure memo of the forest produce is doubtful. The authorised officer further came to hold that it was not within the knowledge of the petitioner that his tractor and trolley is being used in some forest offence. At this juncture it would be appropriate to see the finding of the appellate authority which cannot be marginalized and blinked away wherein it has been categorically held that it was not in the knowledge of the petitioner, who is owner of the impugned tractor and trolley, that his vehicle is being used for any forest offence. Thus there is concurrent finding of fact that it was not in the knowledge of the petitioner that his tractor and trolley was being used to commit any forest offence. Surprisingly, after recording such a finding in favour of the petitioner, ultimately authorised officer as well as the appellate authority constituted under the Act passed the order confiscating the impugned tractor and trolley. The decision of learned Additional Sessions Judge (AnnEx. P-7) is silent on the crucial point whether the petitioner was aware about the fact that his vehicle i.e. tractor and trolley is being used to commit any forest offence. Thus, when there is concurrent finding of fact recorded by the authorised officer as well as appellate authority under the Act that impugned tractor and trolley was used in the forest offence was not in the knowledge or connivance of the petitioner, the impugned tractor and trolley cannot be confiscated. Since there is no finding at all against the petitioner, I am of the view that the petitioner is entitled to the protection provided to him u/s 52(5) of the Act.

Looking to the totality of the facts and circumstances, the impugned orders Annexure-P-5 dated 14-3-1995 passed by the respondent No. 4, Annexure-P-6 dated 21-7-1995 passed by the Conservator of Forest, Jabalpur and Annexure-P-7 dated 26-12-1995 passed by the III Additional Sessions Judge, Jabalpur are hereby quashed. this Court on 1-5-1996 passed an interim order and directed the respondents to give the impugned tractor and trolley in the Supurdgi of the petitioner. However, now for all practical purposes the impugned tractor and trolley shall stand released from confiscation.

The petition is allowed. No order as to costs.