

(2003) 09 KAR CK 0062
In the Karnataka High Court
Case No : Cr.R.P. No. 391 of 2002

Shanthi Devi Lodha

APPELLANT

Vs

The Deputy Conservator of Forest and Authorised Officer

RESPONDENT

Date of Decision : 22-09-2003

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 397, 401
Karnataka Forest Act, 1963 — Section 2 (11), 71 (B), 71 (D)
Motor Vehicles Act, 1988 — Section 51 (5)

Citation : (2004) CriLJ 2451 : (2003) ILR (Kar) 4601 : (2004) 2 KarLJ 238 :
(2004) 1 KCCR 117

Hon'ble Judges : K. Ramanna, J

Bench : Single Bench

Advocate : K.M. Nataraj, for the Appellant; S.G. Rajendra, HCGP, for the
Respondent

Final Decision : Allowed

Judgement

Ramanna, J.—This Revision Petition is directed against the judgment and order dated 28.3.2002 passed by the Addl. Sessions Judge, Chikmagalur, in CrI.A.No. 14/99 whereby, the learned Sessions Judge dismissed the appeal filed by the revision petitioner/Financier u/s 71(D) of Karnataka Forest Act (for short the "Act") against the impugned order passed by the Authorised Officer in his file No. A4.FOC. 139/93-94 dated 18.12.1998. Feeling aggrieved by the said order, the petitioner has come up before this Court under Sections 397 and 401 of Cr.P.C. contending that the revision petitioner being the financier-cum-owner of the vehicle is entitled to have the custody of the vehicle and more over, the Authorised Officer has not given any opportunity to put forth her contentions and the Authorised Officer has not complied with the mandatory provisions of the Act by issuing show cause notice to the registered owner. As on the date of the alleged involvement of the vehicle in the alleged transporting of sandal wood billets, which was in the custody of the registered owner and since the mandatory provisions of the Act have not been complied with by the Authorised

Officer and therefore, the order passed by the Authorised officer and confirmed by the learned Sessions Judge are illegal, incorrect and against the provisions of law.

2. The brief facts of this case are that on 26.2.1994 the forest authorities were on patrolling duty on Khandya - Kondadakhan Road. At about 6 p.m. while they were in front of Bidare Grama Panchayath office, they found offending Lorry MEG-5947 coming from Kondadakhan side, these forest authorities splashed the torch light and gave signal to stop the vehicle. The driver of the lorry did not stop it and proceeded further and then, the forest officers got into their departmental vehicle and chased the lorry. In spite of firing two rounds of bullets in the air, the lorry did not stop immediately and at Ujjani bus stop the lorry was stopped and the three inmates got down abandoned the lorry and started running and they were found in the head light of the lorry. The forest authorities identified one of the three persons as Revanna S/o Janakamma and he was caught but the remaining two persons who are the driver and conductor sped away from that place. Then the forest officers and officials returned near the lorry along with Revanna, S/o, Janakamma and on search, they found the balls of robust coffee in a gunny bag. They removed under the tarpaulin and found as many as 233 sandalwood billets, on which there were no hammer marks and there was no pass or permit. That apart, two gunny bags containing sandal wood chips were also found. Thereafter, after complying with the mandatory provisions and after taking measurements of each sandal wood billets, they were serially numbered and FOC number was written on each one of them. After that, gunny bags containing sandal wood chips were given numbers and the tarpaulin was also given number. Thus, there were sandal wood billets in all weighing about 2,405 kgs. To that effect, a detailed mahazar was drawn between 7 p.m. till 11.00 p.m. and seized those sandal wood billets, sandal wood chips and the lorry. Thereafter, the said lorry and the seized properties were taken to the forest office and the FIR was prepared and then, it was submitted to the jurisdictional Magistrate and the report was submitted to the Authorised Officer, with a prayer to initiate the confiscation proceedings.

3. When the proceedings were pending, the revision petitioner being the financier, filed an application to release the vehicle to her custody. The request of the revision petitioner came to be rejected and accordingly, the revision petitioner approached this Court and this Court allowed the said application and directed that the lorry seized in this case be given to the interim custody. Accordingly, the vehicle was released. Thereafter, the revision petitioner herein, after receipt of show cause notice, appeared before the Authorised Officer and participated in the confiscation proceedings.

3(a). Heard the arguments of Sri K.M. Nataraja, learned Counsel for the revision petitioner and Sri S.G. Rajendra Reddy, HCGP appearing for the respondent.

4. In this behalf, learned Counsel for the revision petitioner submitted that the authorised officer has committed illegality in confiscating the lorry without giving

show cause notice to the registered owner. Further, it is maintained that in pursuance of the purchase of the vehicle, an agreement was entered into between the revision petitioner and one Sheik Abdulla, who is the registered owner of the vehicle on 8.2.1993. Since the lorry was hypothecated in favour of the revision petitioner/financier, she would be the owner of the vehicle and the registered owner would become the hirer only and therefore, the revision petitioner do not know about the using of the said lorry in transporting the alleged sandal wood billets. Therefore, she is not responsible for such an act and the registered owner is required to explain without his knowledge or ensure that the vehicle has been used for alleged transportation of sandal wood billets and chips. Since, no notice has been issued to the registered owner, the entire confiscation proceedings initiated by the authorised officer is illegal, incorrect and perverse and therefore, the revision petition is to be allowed. In support of his contention, learned Counsel for the revision petitioner drawn my attention to Section 2(11) of the Karnataka Forest Act, 1963, which reads as under:-

""Owner" includes a Court of Wards in respect of property under the superintendence or charge of such Court."

Further, he has drawn my attention to Section 51(5) of Motor Vehicles Act, 1988, which reads thus:-

"Where the person whose name has been specified in the certificate of registration as the person with whom the registered owner has entered into the said agreement, satisfied the registering authority that he has taken possession of the vehicle (from the registered owner) owing to the default of the registered owner under the provisions of the said agreement and that the registered owner refuses to deliver the certificate of registration or has absconded, such authority may, after giving the registered owner an opportunity to make such representation as he may wish to make (by sending to him a notice by registered post acknowledgement due at this address entered in the certificate of registration) and notwithstanding that the certificate of registration is not produced before it, cancel the certificate and issue a fresh certificate of registration in the name of the person with whom the registered owner has entered into the said agreement."

5. Learned Counsel for the revision petitioner contended that the registered owner will become the hirer and the financier will become the owner of the vehicle. Since the owner of the vehicle has violated the terms and conditions of the hire purchase agreement dated 8.2.1993, the financier has the absolute right and lien over the vehicle to participate in the confiscation proceedings. Accordingly, he submitted that the order under revision is liable to be set aside.

6. In support of his contention, learned Counsel for the revision petitioner has drawn my attention to the unreported decision of this Court in Criminal Revision Petition No. 706/2001 dated 26.2.2002 wherein it has been held that "before seizure of the vehicle, the Authorised Officer who searched the van had not

recorded the ground and the basis of which he entertained a belief that the offence under the Act was being committed" and therefore, the learned Counsel for the revision petitioner submitted that since the Forest Officer who had made a search has not recorded the grounds and the basis of which he entertained the belief, has prayed that the order under challenge may be set aside.

7. Learned HCGP appearing for the respondent submitted that the plain reading of the order passed by the authorised officer clearly shows that the forest officer and officials who were on patrolling duty on the particular day, after seeing the vehicle coming and when they tried to stop the vehicle involved in this case, its driver did not stop and at last the vehicle was chased and stopped and they found sandal wood billets beneath the robust coffee balls and recorded findings and seized those billets and sandal wood chips in gunny bags and after complying with the mandatory provisions under a mahazar and therefore, the aforesaid decision is not applicable and the petitioner is liable to be dismissed.

8. I have carefully gone through the order under revision passed by the authorised officer which clearly shows that the R.F.O. officials tried to stop the vehicle which was not stopped and therefore, they chased on suspicion that some forest produce might have been loaded in the vehicle and at last, the inmates of the lorry stopped and ran away and then, with great difficulty, one Revanna inmate of the lorry was caught and the remaining inmates namely, driver, cleaners and conductor ran away. Therefore, the concerned forest officer after satisfying himself and after recording the grounds and on the basis of which he entertained a belief that the offence under the Act was being committed, searched and seized the vehicle which was transporting sandal wood and other the properties which were in the vehicle in question and therefore, the decision cited by the revision petitioner referred to above is not applicable to the facts of the case. That apart, learned Counsel for the revision petitioner relied on another decision reported in *SADANAND .I. KARINDI v. DEPUTY CONSERVATOR OF FORESTS AND ANR.* 1998(3) Crimes 540 wherein it has been held as under:

"Where the vehicle is used for an offence with the knowledge and connivance of the owner of the vehicle, the vehicle is liable to be confiscated."

9. It is pertinent to note that as per the terms of the agreement, the revision petitioner being a financier has become the owner of the vehicle. But, as on the date of seizure of the vehicle, the registered owner who was in actual possession has not participated in the confiscation proceedings initiated by the Authorized Officer. It is clear from the records that no notice has been issued to him. Therefore, the Authorized Officer has not issued any notice to the registered owner of the vehicle i.e., Sheik Abdulla, s/o. Ismail, R/o. Beegathalli, as contemplated u/s 71(B) of the said Act stating that the vehicle was being used for the commission of an offence with knowledge and connivance. Therefore, the ratio laid down in the aforesaid decision is applicable to the facts of the case. Further, learned Counsel for the revision petitioner also relied on another decision reported in *Charanjit Singh Chadha and Others Vs. Sudhir Mehra*, wherein, it has

been held by the Apex Court as under:-

"Hire-purchase agreements are executory contracts under which the goods are let on hire and the hirer has an option to purchase in accordance with the terms of the agreement. These types of agreements were originally entered into between the dealer and the customer and the dealer used to extend credit to the customer. But, as hire-purchase schemes gained in popularity, the dealers who were not endowed with liberal amount of working capital found it difficult to extend the scheme to many customers. Then the financiers came into the picture. The finance company would buy the goods from the dealer and let them to the customer under hire-purchase agreement. The dealer would deliver the goods to the customer who would then drop out of the transaction leaving the finance company to collect instalments directly from the customer. Under hire-purchase agreement, the hirer is simply paying for the use of the goods and for the option to purchase them. The finance charge, representing the difference between the cash price and the hire-purchase price, is not interest but represents a sum which the hirer has to pay for the privilege of being allowed to discharge the purchase price of goods by instalments."

10. I have carefully gone through the order under revision passed by the authorised officer and confirmed by the learned Sessions Judge. In the instant case, one Shaik Abdulla is the registered owner of the vehicle has taken the loan of Rs. 2 lakhs from he revision petitioner and executed a hire purchase agreement hypothecating his vehicle in question. In order to appreciate the contentions of learned Counsel appearing on both sides, Section 71(B) of the Karnataka Forest Act is to be culled out:-

"SECTION 71-B: ISSUES OF SHOW CAUSE NOTICE BEFORE CONFISCATION u/s 71-A :- No order confiscating any timber, sandalwood, charcoal, firewood, ivory, tools, ropes, chains, boats, vehicles or cattle shall be made u/s 71-A except after notice in writing to the person from whom if is seized and considering his objections, if any."

11. According to the provisions of Section 71(B), a show cause notice is to be issued to the registered owner of the vehicle and then, to the Financier, if any, who advanced loan by taking hypothecation deed. According to the terms and conditions of the hypothecation agreement, the revision petitioner will become the owner and the registered owner will become the hirer of the vehicle. The forest officer has not issued any such show cause notice to the registered owner (hirer) ie., Sheik Abdulla and without his participation and without giving him any opportunity to explain under what circumstances, the lorry was being used in illegal transportation of sandal wood billets and etc,. Of course, the revision petitioner being a financier has participated in the confiscation proceedings. Section 71(B) clearly shows that the authorised officer is bound to comply with the mandatory provisions of the Act. Learned Sessions Judge has not considered this point while confirming the order passed by the authorised officer. Of course, the financier is also having an alternative and effective remedy to recover the

remaining arrears of instalments from the Sheik Abdulla - registered owner of the vehicle. Unless the registered owner repay the amount together with interest, he will not become the owner of the vehicle. In the circumstances of the case, it is clear that the authorised officer has not given an opportunity to Sheik Abdulla - registered owner of the vehicle. In the instant case, neither the Authorised Officer nor the learned Dist. Judge have not considered this point and they simply ignored the mandatory provisions of Section 71(B) of the Act. Hence, it could be said that the impugned order under challenge passed by the Authorized Officer and the learned District Judge is incorrect, perverse and illegal and the same is liable to be set aside. Accordingly, the principles of natural justice would be met if the revision petition is allowed by setting aside the impugned order under revision by remitting back the case to the authorised officer to issue show cause notice as contemplated u/s 71(B) of the Act to Sri Sheik Abdulla, who is the registered owner of the vehicle and also to the revision petitioner and thereafter, hearing both parties and then to dispose of the case in accordance with law.

11. Accordingly, the revision petition is allowed. The impugned order under challenge passed by the Authorized Officer and the District Judge is set aside and the matter is remitted back to the Authorised Officer with a direction to issue show cause notice to the registered owner Sri Sheik Abdulla and the Financier (i.e., revisional petitioner as contemplated u/s 71(B) of the Karnataka Forest Act and after hearing both parties to dispose of the same in accordance with law.