

(2013) 12 JH CK 0035
In the Jharkhand High Court
Case No : C.W.J.C. No. 2634 of 2000 (P)

Sheo Shankar Bhagat

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 05-12-2013

Acts Referred:

Citation : (2014) 2 JLJR 115

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Judgement

Narendra Nath Tiwari, J.—In this writ petition, the petitioner has prayed for quashing the order dated 23rd April, 1993 passed by the Divisional Forest Officer, Dumka in Confiscation Case No. 4 of 1993, whereby the petitioner's truck, bearing Registration No. BR36-7065 has been confiscated on the allegation that the said vehicle was used in committing forest offence. The petitioner has further prayed for quashing the order dated 13th April, 1996 passed by the Deputy Commissioner, Godda in Confiscation Appeal No. 1 of 1993 and also the order passed by the Secretary, Forest & Environment Department, Bihar, Patna dated 4th January, 2000 in Revision Case No. 16 of 1996, whereby the petitioner's appeal and the order of the Divisional Forest Officer-cum-Authorized Officer have been upheld.

2. The fact, briefly stated, is that a case was instituted against the petitioner's truck, bearing Registration No. BR36-7065, on the allegation of loading fire wood in the forest area illegally. The truck was seized by the Authorized Officer with the help of the Forest Guard, Pathargama. Thereafter, a confiscation case was initiated by the Divisional Forest Officer, Dumka, being Confiscation Case No. 4 of 1993.

3. The petitioner is the registered owner of the said truck. Notice was served on him in the confiscation case. He had appeared and filed reply. The stand of the petitioner in the confiscation case was that the fire wood was loaded on the truck without his consent. The truck was also not produced with loaded woods and that

the truck was not seized in the forest area. The petitioner claimed that the valuation of the wood seized from the truck was very low in comparison to the price of the truck and the seizure of the truck was illegal.

truck was chased and seized by the Beat officer, Karanatalat Pathargama from Ratanpur on 4th February, 1993 and the truck driver and Khalasi were arrested. They gave statement that they were transporting forest produce with the consent of the truck owner. The seized woods were forest prod 4. Learned Divisional Forest Officer, rejected the said explanation and held that the truck of the petitioner was carrying 200 wood poles of Sawl, 50 pieces of Mahua, 42 pieces of Asan and 118 pieces of the trees of different varieties without any transit permit. Theuce and were brought from a notified forest area.

5. Learned Divisional Forest Officer, thus, passed order dated 23rd April, 1993, confiscating the petitioner's truck.

6. Against the said order, the petitioner preferred appeal before the Deputy Commissioner, Godda which was registered as Confiscation Appeal No. 1 of 1993-94. The Appellate Authority dismissed the appeal by order dated 13th April, 1996 upholding the order of the Divisional Forest Officer.

7. The petitioner, thereafter, preferred revision before the Secretary, Forest & Environment Department, Bihar, Patna. Learned Revisional Authority without looking to the facts and material on record made casual observation holding that the vehicle was carrying forest produce without valid transit and the truck was used in committing forest offence. Learned Revisional Authority also upheld the order passed by the Authorized Officer as also the Appellate Court and dismissed the revision by order dated 4th January, 2000.

8. The said orders have been challenged in this writ petition mainly on the ground the same have been passed casually and arbitrarily and are not supported by the cogent material and evidence on record. The concerned authorities have also bypassed the legal provisions and recorded their findings wantonly.

9. Learned counsel appearing on behalf of the petitioner submitted the Authorized Officer as well as the Appellate Authority and the Revisional Authority failed to take Into consideration that the petitioner had specifically taken defence that he had no knowledge that the woods were loaded on the truck and the woods were removed from the forest area. The truck was also not produced with woods and was not seized in the forest area. It was also categorically mentioned that the valuation of the wood loaded on the truck is very low in comparison to the price of the truck. But learned Authorized Officer as well as learned Appellate Authority and the Revisional Authority did not consider the same and also not touched the valuation aspect. The finding that the truck was used with the consent of the owner is not supported by any evidence on record.

10. Learned counsel submitted that Article 300A of the Constitution of India

envisages that no person shall be deprived of his property saved by authority of law. But without following the process prescribed by law and without taking into consideration the local provisions the concerned authorities have summarily rejected the petitioner's defence and without any evidence on record have held that the petitioner's truck was used in committing forest offence with his consent. Neither the Authorized Officer nor the Appellate Authority nor the Revisional Authority has discussed any evidence on the basis of which the statement of the forester has been believed and the defence of the petitioner has been disbelieved. The finding of the Authorized Officer is, therefore, wholly perverse and unsustainable.

11. The writ petition has been opposed by the respondents by filing counter affidavit. It has been, *inter alia*, stated that the petitioner's truck was seized with forest produce within the meaning of Section 2(4) of the Indian Forest Act, 1927, as it was loaded with fire wood without any transit permit. After seizure of the truck, confiscation proceeding was initiated. Notice and opportunity was given to the petitioner for his defence. After considering the facts and material on record and hearing the petitioner, it was found that the truck was loaded with forest produce for the purpose of transportation without any transit permit in violation of Section 52 of the Indian Forest Act. The order of confiscation was thus, passed by the Authorized Officer after consideration of the facts and material on record. The petitioner assailed the said order before the Appellate Authority. His appeal was dismissed. The petitioner, thereafter, preferred revision. The Revisional Authority upheld the order of the Authorized Officer as well as that of the Appellate Authority. There is no infirmity in the said orders and the same do not warrant any interference by this Court.

12. I have heard learned counsel for the parties and considered the facts and material on record. The admitted position in this case is that the petitioner's truck was seized on the allegation that it was carrying freshly cut rotas and fire wood of different trees without any transit permit. The truck driver and cleaner were arrested allegedly after chase and the truck was seized. On the basis of the written report, a case under Sections 33(1), 41, 42 and 52 of the Indian Forest Act was registered against the truck driver, Khalasi and the petitioner (owner of the truck). At the same time, a proceeding was initiated for confiscation of the truck. The petitioner has produced judgment dated 2nd April, 1998 passed in T.R. No. 118 of 1998/GRC No. 5 of 1993, which goes to show that the prosecution initiated against the petitioner and others under Sections 33(1), 41, 42 and 52 of the Indian Forest Act ended in acquittal of the accused persons, including the petitioner. It has been held by learned court trying the said case that the petitioner was not found guilty of the alleged offences. However, Confiscation Case No. 4 of 1993 against the petitioner was concluded by holding that the petitioner's truck was involved in forest offence. The said finding of the Divisional Forest Officer, Dumka-cum-Authorized Officer is contrary to the finding of the learned Trial Court recorded in T.R. No. 118 of 1998/GRC No. 5 of 1993.

13. On going through the order of the Divisional Forest Officer-cum-Authorized Officer, I find that he has simply stated the facts of the case, the defence taken by the petitioner and perused the statement of the forest officials. There is no discussion of evidence on the basis of which the allegation of the forest officials has been found to be proved. The finding of the Divisional Forest Officer-cum-Authorized Officer is, thus, wholly perverse. There is no evidence to prove that the petitioner's truck was loaded with forest produce with his consent and that the truck was seized with the forest produce.

14. Though it is true that the right to property is no longer a fundamental right, there is a clear mandate of the Constitution in Article 300A that a person cannot be deprived of his property saved by authority of law. Property of a person cannot be confiscated in casual manner without satisfying the requirement of law.

15. An order, which has effect of deprivation of right protected by the constitution/law has to conform the legal provision and the principle of natural justice. If a person is sought to be deprived of his property on allegation of violating any law, onus is heavy on the person to establish such violation by legal evidence.

16. In the instant case the petitioner had specifically denied the allegation of his consent for the use of the truck in transporting alleged forest produce and also that his truck was seized with any forest produce and committed any forest offence, the onus was on the prosecutor to establish the allegation/charge. But there is no discussion of any evidence on the basis of which the allegation against the petitioner has been held to be proved.

17. In *Ram Awadh Pandey Vs. The State of Jharkhand and Others*, , this Court has held that no property can be confiscated u/s 52 of the Act without cogent material on record to establish knowledge of the truck owner regarding commission of forest offence.

18. This Court is in almost similar case of *Sandeep Saluja Vs. The State of Jharkhand and Others* , has ruled that confiscation of the property of citizen cannot be made wantonly and casually unless there is cogent evidence on record to substantiate the allegation of violation of some provision of law.

19. Conversely the charges framed against the petitioner on the same allegation under Sections 33(1), 41, 42 and 52 of the Indian Forest Act have been held to be not proved in a full fledged trial by the learned Judicial Magistrate, First Class, Godda.

20. I find no legal basis for the finding recorded by the Divisional Forest Officer-cum-Authorized Officer. The orders of the Appellate Authority as well as the Revisional Authority are merely paraphrased version of the order of the Authorized Officer without discussion of evidence in support of their conclusions.

21. In view of the above discussion, the order dated 23rd April, 1993 passed by the Divisional Forest Officer-cum-Authorized Officer in Confiscation Case No. 4 of

1993, the order dated 13th April, 1996 passed by the Deputy Commissioner (Appellate Authority) In Confiscation Appeal No. 1 of 1993-94 and the order dated 4th January, 2000 passed by the Secretary, Forest & Environment Department, Bihar, Patna (Revisional Authority) in Confiscation Revision No. 16 of 1996 are unsustainable in law and are, hereby, quashed.

22. This writ petition is allowed.

23. The respondents are directed to release the petitioner's truck, bearing Registration No. BR36-7065, forthwith.