

(2017) 02 RAJ CK 0072
In the Rajasthan High Court
Case No : 6307 of 2016

Shoukat Khan Son of Shri Rati Khan

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 22-02-2017

Acts Referred:

Indian Penal Code, 1860, Section 120B, Section 379 - Punishment of criminal conspiracy - Punishment for theft
Mines and Minerals (Regulation and Development) Act, 1957

Citation : (2017) 02 RAJ CK 0072

Hon'ble Judges : Dr. Pushpendra Singh Bhati

Bench : SINGLE BENCH

Advocate : Sunita Vashistha, Sonia Sandilya, Narendra Shekhawat

Final Decision : Allowed

Judgement

1. Petitioner has filed this petition under Section 482 of the Cr.P.C. challenging the order dated 23/11/2016 passed by the Magistrate First Class, Bhiwadi, Distt-Alwar in FIR No.391/2016 before the Police Station Bhiwadi Phase-IIIRD, Distt-Alwar for offence under Section 379, 120B IPC 4, 21 M.M.D.R. 33, 41, 42 of Rajasthan Forest Act, 1953 for giving Supurdgi of vehicle (Dumper) bearing No.H.R.-55 P-1211 .

2. Learned counsel for the petitioner Smt. Sunita Vashishta has stated that the court below

has heard the application moved by the petitioner for release of the vehicle in question on superdgi. Learned counsel has drawn attention to the Section 55 of the Rajasthan Forest Act, 1953 (hereinafter referred as "The Act of 1953"), whereby the confiscation could be initiated only upon the conviction of the offender for the offences pertaining to the Forest Act subject to the provision of Section 52-(A)(B) and (C).

3. Section 55 of the Rajasthan Forest Act, 1953 reads as follows:

"55. Forest Produce, tools etc. when liable to confiscation.- (1) All timber or forest produce which is not the property of State Government and in respect of which a forest offence has been committed, and all machinery, arms, tools, boats, cattle, vehicle, ropes, chains or any other article used in committing any forest offence, shall, subject to the provisions of Section 52, 52A, 52B and 52C be liable to confiscation upon conviction of the offender for such forest offence.]

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.

4. The counsel for the petitioner has stated that since the conviction has not been made, therefore, any valid confiscation proceedings could not have been initiated by the respondent and, therefore, the vehicle is liable to be released.

5. Learned counsel for the respondent Smt. Sonia Sandilya and Shri Narendra Shekhawat, both the Public Prosecutor have drawn attention of the Court towards the judgment passed by the Hon"ble Division of this Court in D.B. Criminal Misc. Petition No.76/2014 titled Harun Vs. State of Rajasthan decided on 23/9/2015, whereby the release of vehicle under Rajasthan Forest Act, 1953 has

been dealt with at length. Hon"ble Division Bench has held that jurisdiction of the Magistrate Court would be barred under Section 52 (C) of the Act of 1953 and the same shall operate upon the initiation of confiscation. The relevant portion of the judgment is as follows:

"21. We accordingly hold that vehicle seized under the provisions of the Rajasthan Forest Act, 1953 cannot be released during the pendency of trial on supurdgi to the registered owner by the Magistrate, where the trial is pending, in view of specific bar to jurisdiction of Court under section 52C of the Act. But, the bar to jurisdiction operates only when a Magistrate receives intimation under sub-section (4) of Section 52 about initiation of proceedings for confiscation.

22. With the above answer, the petitions are finally disposed of. The petitioners will be at liberty to apply afresh either before the competent Magistrate having jurisdiction or Authorized Forest Officer, as the case may be, for interim release of vehicle. Needless to mention that the Magistrate or Authorized Forest Officer shall pass speaking order on such application, having regard to our above answer to the question of law framed by the learned Single Judge. A copy of this order be placed in all the connected files."

6. The counsel for the respondents have also referred to Section 52 (c) whereby there is an express bar to jurisdiction of Court under certain circumstances.

7. Learned counsel for the petitioner has also relied upon the judgment passed by this Court in SB Criminal Misc. Petition No.592/2017 in case of Ugma Balai Vs. State of Rajasthan, whereby while relying upon the judgment, the relevant portion of the judgment is as follows:

"Learned counsel for the petitioner has submitted that the petitioner is the attorney holder of the vehicle in question. Learned counsel has submitted that the courts below have erred in dismissing the application moved by the petitioner for release of the vehicle in question on Superdari. Learned counsel has submitted that there was no statutory bar on release of the vehicle in

question on Superdari to the petitioner during trial. In support of his arguments, learned counsel has placed reliance on decision of this court on Shakir Hussain versus State of Rajasthan in S.B. Criminal Misc. Petition No. 4389/2016 decided on 26.09.2016.

8. Learned State Counsel on the other hand, has opposed the petition.

Keeping in view the submissions made by learned counsel for the petitioner this petition is allowed. It is ordered that the vehicle bearing registration No. RJ-26-RB-3576 be released to the petitioner forthwith subject to his furnishing necessary Superdari bonds to the satisfaction of the trial court."

9. Learned counsel for the petitioner also

relied upon the judgment of Yunush Vs. State of

Rajasthan in S.B. in Criminal Misc. Petition

NO.3944/2016 decided on 14/9/2016, the relevant

portion of the judgment is as follows:

"Contention of the learned counsel for petitioner is that the aforesaid tractor with trolley was seized in connection with the offence under Sections 41 and 42 of the Rajasthan Forest Act and Sections 279, 379, 336, 120-B of the IPC in FIR No.163/2014 on 04.05.2014. After registration of the FIR, the procedure prescribed under Sections 52(2) and 52(4) of the Rajasthan Forest Act, was not put in motion. The police without there being any implication of provision of Section 52 of the

Act, filed the charge-sheet in the matter. After filing of chargesheet, petitioner moved an application under Section 451 of the Cr.P.C. for release of the vehicle on "supurdgi", which came to be rejected vide order dated 14.08.2014.

Learned counsel for petitioner submitted that in view of the aforesaid facts, petitioner is entitled for the custody of the tractor with trolley. There is no other claimant. No useful purpose will be served in keeping the vehicle in police custody. It may deteriorate its condition, which will be a national wastage. There is no statutory bar on the release of the vehicle on "supurdginama" during the trial.

Learned counsel for petitioner in support of his argument, placed reliance on the judgments of this Court in Arif Khan Vs. State of Rajasthan : 2004 WLC (Raj.) UC 540 & Nanda Vs. State of Rajasthan : 2004 WLC (Raj.) UC 608.

Thus, considering all the facts and circumstances of the case, I deem it just and proper to allow this petition under Section 482 Cr.P.C. for securing ends of justice.

Consequently, the petition is allowed. The order dated 14.08.2014 of learned trial court is set aside. It is directed that Tractor bearing registration No.HR-26-

BF-4189 with trolley shall be delivered to the petitioner on "supurdgi" on his furnishing "supurdginama" in the sum of Rs.3,00,000/- with two sureties in the amount of Rs.1,50,000/- each, undertaking to produce the vehicle in question before the concerned court as and when required and shall keep the condition of the vehicle intact and shall not transfer, mortgage or otherwise alienate the vehicle or damage it and change its shape in any manner whatsoever. The petitioner shall also furnish photographs of the Tractor with trolley showing its numbers, colour etc. It is made clear that in future if the vehicle is found to have been used in similar offence in future, the same would be liable to be confiscated."

10. Learned counsel for the respondents also furnished a factual report addressed to her in which the fact was that the concerned Police Station has proceeded for ordering of confiscation of the vehicle before the respective forest authority.

11. The provisions of Section 52 (C) of the Rajasthan forest Act, 1953 reads as follows:

"52-(C) Bar to jurisdiction of Court, etc. under certain circumstances.- (1) On receipt of intimation under subsection (4) of section 52 about initiation of proceedings for confiscation of property by the Magistrate having jurisdiction to try the offence on account of which the seizure of property, which is subject matter of confiscation, has been made, no court, tribunal or authority (other than the authorised officer, the Appellate Authority and the Court of Sessions referred to in sections 52, 52A and 52B), shall have jurisdiction to make orders with regard to possession, delivery, disposal, or distribution of the property in regard to which proceedings for confiscation are initiated under Section 52, notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force.

Explanation.- Where under any law for the time being in force, two or more courts have jurisdiction to try forest, then receipt of intimation under subsection (4) of section 52 by one of the Courts of Magistrates having such jurisdiction shall be construed to the receipt of intimation under that provision by all the Courts and the bar to exercise jurisdiction shall operate on all such Courts.

(2) Nothing in sub-section (1) shall affect the power saved under Section 61 .]

12. After hearing the counsel for both the parties and perusing the record of the case as well

as precedent law cited, this Court is of the opinion that Section 55 of the Act, 1953 creates an obligation upon the respondents to begin the confiscation only upon the conviction of the offender of such forest offences. The legislative intention under Section 55 of the Act, 1953 is apparent the special law of confiscation shall apply only when the persons have been convicted under the forest offences. The language of the Provision 52 (C) is also very clear in the same terms and same ousts the jurisdiction of the court upon initiating for confiscation of the property by the Magistrate having jurisdiction to try the offences on account of such seizure of property which is subject matter of confiscation has been made.

13. The precedent law cited by the respondents laid down by the Division Bench of this Hon"ble Court in the case of Harun Vs. State of Rajasthan (supra) also stated that bar to jurisdiction operates only when the Magistrate receives intimation under sub Section 4 of Section 52 about the initiation of the proceedings for confiscation. Observation in para 21 of the judgment makes it clear that the bar to jurisdiction shall operate upon a Magistrate only when the confiscation proceedings have been initiated. On the conjoint reading of the precedent law as well as the Act of 1953 it is clear that Section 55 imposes the condition of initiating confiscation upon the

conviction of the offender for the forest offences and until such conviction happens bar to the jurisdiction to release the vehicle concerned shall not operate in light of the aforementioned discussions.

14. The misc. petition is allowed and the impugned order dated 23/11/2016 passed by the Magistrate First Class, Bhiwadi, District Alwar (Raj.) is quashed and set aside and it is ordered that the possession of Dumper bearing Registration No.HR-55 P-1211 should be handed over to the petitioner on "Supurdgi" on his furnishing "Supurdginama" for the sum of Rs.3,00,000/- (Rs. Three Lacs) with two sureties for the amount of Rs.1,50,000/-(Rs. One Lac fifty thousand) each, and undertaking to produce the vehicle in question before the concerned court as and when required. The owner shall keep the condition of the vehicle intact and shall not transfer, mortgage or alienate the vehicle or damage it and change its shape in any manner. The petitioner shall also furnish photographs of the vehicle showing its numbers, colour etc. It is made clear that in future if the vehicle is found to have been used in similar offence the same would be liable to be confiscated.