

(2003) 04 BOM CK 0029

In the Bombay High Court

Case No : Criminal W.P. No. 155 of 2002

Shyamrao Kapgate and Another

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Bombay Transit of Forest Produce (Vidarbha Region Saurashtra and Kutch Area) Rules, 1960 — Rule 3
Criminal Procedure Code, 1973 (CrPC) — Section 457
Forest Act, 1927 — Section 41, 52, 61A, 61G

Citation : (2003) 4 MhLj 181

Hon'ble Judges : R.M.S. Khandeparkar, J;P.S. Brahme, J

Bench : Division Bench

Advocate : M. Munshi, for the Appellant; K.S. Dhote, Additional. Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

R.M.S. Khandeparkar, J.—Heard the learned Advocate for the petitioners and the learned Additional Public Prosecutor for the respondents.

2. The petitioners challenge the order passed by the Authorised Officer and confirmed by the Additional Sessions Judge in relations to the tractor and trolley which was seized by the Forest Officer in exercise of powers u/s 52 of the Indian Forest Act, 1927 (hereinafter to be referred to as "the Act"). The challenge is on two grounds, namely, that the transportation of firewood and the timber through the vehicle of the petitioners was under the bona fide belief that the same is being transported pursuant to the issuance of necessary transit pass and secondly, that the respondents themselves had admitted before the Magistrate that the wood transported through the vehicle of the petitioners was not from the Government land but it was from the private land.

3. Few facts relevant for the decision are that on 22-4-1988 the vehicle of the petitioner driven by himself was intercepted near village Kooba within the district

of Bhandara, by the patrolling party of the forest department and was found transporting firewood and four logs of teak wood through the trolley attached to the tractor without having any transit pass for transportation of the same and, therefore, under the reasonable belief that the same is a forest offence, the said vehicle, i.e. the tractor with the trolley along with the firewood and the teak logs was seized by the Forest Officer u/s 52 of the said Act. The petitioners thereupon filed an application before the Judicial Magistrate. First Class, Sakoli for release of the said vehicle along with the trolley and the same was allowed by the J.M.F.C. by his order dated 24-4-1988. It appears that the effort on the part of the respondents to get the said order set aside did not yield fruitful result and ultimately the vehicle was released in favour of the petitioners. Meanwhile, the Forest Officer in exercise of powers u/s 61-A of the said Act directed the seized materials along with the said vehicle to be confiscated by his order, dated 20-6-1988 holding that the petitioners had contravened the provisions of law u/s 41 read with Section 26(i)(f) and Section 33(1)(a) of the Indian Forest Act. The tractor bears the registration No. MGU/39 and the trolley attached to it bears registration No. BYY/2276. The said order was passed on 20-6-1988. Being dissatisfied, the petitioners preferred appeal u/s 61-D of the Act before the Sessions Judge, Bhandara which came to be heard and disposed of by the 3rd Additional Sessions Judge, Bhandara by judgment and order dated 10-5-1990 whereby the appeal was dismissed and the order of confiscation passed by the Authorised Officer was confirmed mainly on the ground that the petitioners were found transporting teak-wood logs through the trolley attached to the vehicle without having transit pass.

4. Section 41 of the Indian Forest Act, 1927 empowers the State Government to make rules to regulate transit of forest produce. Accordingly, it may make rules to regulate the transit of all timber and other forest-produce. Sub-section (2) of Section 41 provides that in particular and without prejudice to the generality of Sub-section (1) of Section 41, the State Government may make rules in relation to different particulars enumerated thereunder including and pertaining to prohibition of import and export or moving of such timber or other produce without a pass from officer duly authorised to issue the same or otherwise than in accordance with the conditions of such pass.

5. Section 2(4) of the said Act defines the term "forest-produce" to include various items including timber. Section 2(6) defines the term "timber" to include trees when they have fallen or have been felled, and all wood whether cut up or fashioned or hallowed out for any purpose or not; and the expression "tree" as defined in Section 2(7) to include palms, bamboos, stumps, brush-wood and canes.

6. Rule 3 of the Bombay Transit of Forest-Produce (Vidarbha Region, Saurashtra and Kutch Areas) Rules, 1960, which are applicable to the district in question provides for regulation of transit of forest-produce by means of passes. Accordingly, no forest produce should be transported into, from or within the said

district without a pass from an officer or person duly authorised by or under the said rules to issue such pass or otherwise than in accordance with the conditions thereof or by any route or to any destination other than the route or destination specified in such pass, except such forest produce as may be exempted by the State Government from the operation of these rules by notification in the Official Gazette.

7. Bearing in mind the provisions of law and applying the same to the fact of the case, it is undisputed fact that the petitioner was not having in his possession the transit pass in relation to the timber logs which were being transported through the trolley attached to the vehicle of the petitioners, when the same were seized by forest officers in exercise of powers u/s 52 of the said Act. Undoubtedly, it was the defence sought to be raised by the petitioners that the petitioners were under bona fide belief that the owner of the timber was in possession of the transit pass and that in fact such transit pass was shown to him at the time of loading of the said logs in the trolley of the vehicle of the petitioners. The defence raised by the petitioners apparently disclosed that, apart from the well-established principle of law that ignorance of law is no excuse, that the petitioners were fully aware of the requirement of the law, that is to say, that for the purpose of transportation of timber, the transit pass issued by the authorised forest officer is necessary and in the absence of such transit pass, transportation of timber is prohibited. Yet, admittedly the petitioners were not in possession of such transit pass at the time when the vehicle was intercepted and the timber from the vehicle was seized by the forest officer u/s 52 of the said Act. This apparently shows that the petitioners knowing well regarding the prohibition imposed for transportation of the timber without the possession of transit pass, they in fact did transport the timber through their vehicle without having such transit pass. Both the authorities below having considered the said aspect have ordered confiscation of the timber as well as the vehicle through which such timber was transported.

8. Section 52 of the said Act clearly provides that when there is reason to believe that the forest offence has been committed in respect of any forest produce, such produce together with the vehicle used in committing any such offence may be seized by any Forest Officer or Police Officer. As already seen above, the expression forest produce includes any timber and it is not necessary that it should be only from the Government forest. Being so, once the petitioner was found transporting the forest produce without having in his possession the transit pass, the forest produce was naturally liable to be seized u/s 52 read with Section 41 of the said Act and Rule 3 of the said Rules. It is not in dispute that consequent to the seizure of the property u/s 52(1) of the said Act, a report was made by the Forest Officer to his superior officer in terms of proviso to Sub-section (2) of Section 52 and in fact that is apparent from the proceedings conducted u/s 61-A of the said Act. Section 61-A as is in force in the State of Maharashtra provides that notwithstanding anything contained in the other provisions of chapter IX of the said Act or any other law, where a forest-offence

is believed to have been committed in respect of timber or any other notified forest-produce which is the property of the State Government, the officer seizing the property under Sub-section (1) of Section 52 shall without any unreasonable delay produce it, together with vehicles used in committing such offences, before an officer authorised by the State Government in that behalf by notification in the Official Gazette, not being an officer below the rank of an Assistant Conservator of Forests. Such officer is also to be referred as authorised officer in terms of said Section 61-A. Sub-section (3) of Section 61-A provides that where an authorised officer seizes under Sub-section (1) of Section 52 any timber or any other notified forest-produce which is the property of the State Government or any such property is produced before an authorised officer u/s (1) and he is satisfied that a forest-offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest-offence, order confiscation of the property so seized together with vehicle used in committing such offence. Section 61-D empowers any person aggrieved by an order passed u/s 61-A to file an appeal within 30 days from the date of communication of such order to him. Apparently, therefore, when any property involved in forest offence is seized u/s 52(1) by the forest officer and report is made in respect thereof in terms of proviso to Sub-section (2) of Section 52 to the higher officer, the authorised officer is empowered to take proceedings for confiscation of such property seized under such provision of law. It is to be noted that in terms of Section 69 of the said Act, there is a presumption regarding the forest produce to be belonging to the Government. It provides that when in any proceedings taken under the said Act or in consequence of anything done under the said Act, question arises as to whether any forest property is the property of the Government, such produce shall be presumed to be the property of the Government until contrary is proved. There cannot be any dispute that in terms of Section 61A, question of confiscation of the forest produce would arise only when the property is of the Government and in terms of Section 69, there is presumption in relation to every such forest produce that it belongs to Government unless the contrary is proved.

9. Irrespective of the fact whether the property belongs to the Government or not, Rule 3 of the said Rules as seen above requires transit pass for the purpose of transportation of any forest produce. It is not the case of the petitioner that in terms of Rule 3(c) there is any notification issued exempting the forest produce which was seized by the forest officer from the requirement of the transit pass under the said Rules. Being so, once it is not in dispute that the petitioners had been transporting the forest produce in the absence of any transit pass for such transportation of the forest produce, the forest offence was clearly disclosed and, therefore, no fault can be found with the impugned order passed u/s 61-A and confirmed u/s 61-D of the said Act on the ground of absence of transit pass while transportation of such forest produce.

10. As regards the second ground of challenge, there is no doubt that the order passed by the Magistrate while ordering release of the tractor and trolley

undoubtedly discloses a finding to the effect that :

"....I am satisfied that the wood which was being carried in the tractor trolley is not the property of State or F.D.C.M. This fact is corroborated by the Forest Officer who seized the wood and just thereafter drew the panchanama of spot where it was cut from and it reads that it is the land of Tulshiram where the trees were standing and were his property. Thus the provisions of Sections 61-A to G having not been attracted, I found it a fit case to be dealt with by this court."

Undoubtedly, the said finding has been given by the Magistrate in a proceedings initiated by the petitioners for release of the trolley. The Magistrate apparently appears to have sought to exercise the jurisdiction u/s 457 of Criminal Procedure Code, in the absence of any provision under the said Act empowering the Magistrate to deal with the property seized by the forest officers under the said Act. At this stage and before considering the argument on behalf of the petitioners based on the said finding of the Magistrate to contend that the property in question was admittedly from a private forest and, therefore, it was admittedly a private forest produce and not that of the Government, it would be necessary to consider the provisions of Section 61-G of the said Act.

11. In terms of Section 61-G whenever any timber, or any other notified forest produce which is the property of the State Government, together with vehicle used in committing any offence is seized under Sub-section (1) of Section 52, the authorised officer u/s 61A or the officer specially empowered u/s 61C or the Sessions Judge hearing an appeal u/s 61D shall have, and notwithstanding anything to the contrary contained in the said Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, any other officer, court, tribunal or authority shall not have, jurisdiction to make orders with regard to the custody possession, delivery, disposal or distribution of such property and any vehicle. Obviously, therefore, once a report is made by the seizing officer u/s 52(2) proviso to the superior officer in relation to the forest produce or the property seized under the said provision of law, under the belief that the forest offence has been committed in relation to a forest produce, which is the property of the Government, the authorised officer and the authorised officer alone u/s 61A is empowered to make order as regards the custody, possession, delivery, disposal or distribution of such property and no other authority or the Court is empowered to deal with the same in any manner. The jurisdiction of the Magistrates exercising their powers under Code of Criminal Procedure is also barred in terms of Section 61G in relation to such forest produce or in respect of such property. Considering the same and though it is sought to be contended and not challenged on behalf of the petitioners and not challenged on behalf of the respondents that the order of the Magistrate dated 24-4-1988 was confirmed by the Sessions Judge, it was apparently in exercise of jurisdiction under the provisions of Code of Criminal Procedure, 1973 and not the provisions of the said Act. It is to be noted that Sections 61A to 61G are in force in the State of Maharashtra with effect from 1-6-1985. Admittedly, the seizure was on

22-4-1988. In the circumstances, therefore, the entire exercise by the Magistrate and the Sessions Judge under the Code of Criminal Procedure was without jurisdiction and, therefore, ab initio void. The finding given by the Court without jurisdiction, therefore, cannot have any evidentiary value. Being so, the finding of the Magistrate in the order dated 24-4-1988 is of no consequence and of no assistance to decide the matter. In the circumstances and bearing in mind the provisions of Section 69 of the said Act, it was necessary for the petitioners to prove before the authorised officer in the proceedings u/s 61A that the forest produce which was found to be transported through the vehicle of the petitioners was not the produce belonging to the Government but it was a produce from the private forest. Admittedly, no such exercise has been done by the petitioners and, therefore, the presumption u/s 69 in relation to the forest produce which was found in the vehicle of the petitioners stands unrebutted. Hence, the exercise under Sections 61-A and 61-D by the Forest Officer and the learned Sessions Judge by the impugned order cannot be found fault with and for the same reason, therefore, the contention of the petitioners that in view of the finding by the Magistrate the authorities could not have exercised the jurisdiction u/s 61-A or 61-D is to be rejected.

12. In the result, and as no other ground for challenge is urged before us, therefore, there is no case made out for interference in the impugned orders and hence, the petition fails and is dismissed. Rule is discharged with no order as to costs.