
(2008) 01 MP CK 0086
In the Madhya Pradesh High Court

Smt. Hadiya Begum

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

Forest Act, 1927 — Section 33, 41, 52

Citation : (2008) CriLJ 2082 : (2008) ILR (MP) 452 : (2008) 2 MPLJ 644

Hon'ble Judges : Dipak Misra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dipak Misra, J.

The petitioner is the owner of the truck bearing registration No. MPW-1875. The said truck was seized by the competent authority, the third respondent herein, on 2-10-1999 on the ground that it was involved in illegal transportation of 80 stones. A forest case No. 709/18 was registered against him u/s 33, 41 and 52 of the Indian Forest Act, 1927 (for brevity "the Act"). The prescribed authority by order dated 16-10-2001 vide Annexure-P/1 passed an order in exercise of the power conferred on him u/s 52 of the Act directing confiscation of the said truck. The petitioner, being dissatisfied with the aforesaid order of confiscation, preferred an appeal u/s 52-A of the Act before the appellate authority. It was contended before the appellate authority that the alleged stones did not belong to the Forest Department and the loading was done from the mines of one Durjan Kondar situated in the village Ranipur having a valid transit pass No. 372837 which was valid up to the year 2001. That apart, it was also contended that the vehicle in question was not involved in any kind of illegal transportation and the witnesses did not support the version which did find mention in the allegation sheet.

The appellate authority, as set forth, without appreciating the assertions and the contentions in proper perspective affirmed the order of the revisional authority

by his order dated 7-11-2003 as contained in Annexure-P/3.

Being grieved by the orders passed by the aforesaid authorities the petitioner preferred a revision before the learned Third Additional Sessions Judge. Chhatarpur forming the subject-matter of Criminal Revision No. 312/2003. The learned Additional Sessions Judge declined to interfere by the impugned order dated 4-2-2004 as per An-nexure-P/5.

It is urged in the petition that the forums below have failed to appreciate the statement of Durjanlal from whose mines stones were transported inasmuch as the documents on record fully and completely establish the said fact. Testimony of the witnesses and the transit pass in Form No. 10 issued in favour of Durjanlal clearly show the authority of the transit pass and thereby the legality of transportation. It is contended that there was nothing incriminating to show that the truck in question was involved in any illegal act causing violation to the provisions of the Act and in the absence of a case being made out entire proceedings for confiscation and the ultimate order of confiscation are unsustainable in law. In this backdrop a prayer has been made to issue a writ of certiorari for quashment of the orders impugned and to grant compensation of Rs. 1.5 lakh to the petitioner for loss of the property and Rs. 5 lakh for defamation.

A counter-affidavit has been filed by the answering respondents stating, inter alia, that the forest, officers during patrolling on 2-10-1999 seized the truck as it was being plied without any authority of carrying boulders from Sarkoha beat, compartment No. P-327. The driver did not possess any valid pass. The vehicle was carrying 18 boulders. It is put forth that the seizure-memo and spot Panchnama were prepared and the driver Latif Khan and Guddan Khan, the husband of the petitioner duly signed those documents. After due enquiry and being convinced that a prima facie case did exist the Authorised Officer-cum-Sub Divisional Officer (Forest) initiated the confiscation proceeding. It is asserted that the petitioner authorised her husband to participate in the confiscation proceeding and on the basis of the said authority the said Guddan Khan participated in the entire proceeding relating to confiscation. The Prescribed Authority during the enquiry found that the vehicle of the petitioner was involved in the forest offence as the seized boulders were extracted from the protected forest and was carried without authority in the truck bearing registration No. MPK-1875. At that time there was no pass for carrying such material. Reliance has been placed on the admission of the driver of Latif Khan and the husband of the petitioner that they did not possess a valid transit pass while boulders were being carried in the truck. The plea that the vehicle in question was carrying any unauthorised item without the knowledge of the owner is sans substance inasmuch as no pass was produced and the husband of the petitioner was present in the truck at the time of seizure. It is set forth that in course of enquiry a letter and pass No. 372837 were produced in support of transportation but on a scrutiny of the said pass it was found that name of another driver, namely,

Brijgopal was mentioned therein. Because of the same the said document was not placed reliance upon by initial authority. It is asseverated that when at the spot documents were not produced and there was an admission that the documents were not there and during the enquiry a transit pass was produced which did not relate to the driver the initial authority and the appellate authority directed confiscation which stood affirmed by the revisional Court and hence, there is no illegality or any kind of irregularity in recording such a finding. It is further put forth that when such findings do not exhibit any kind of perversity of approach there is no justification warranting interference of this Court in the writ petition.

I have heard Mr. Mukesh Pandey and Mr. H.S. Verma, learned Counsel for the petitioner and Mr. Samdarshi Tiwari, learned Govt. Advocate for the State.

Questioning the correctness of the orders passed by the Courts below Mr. Mukesh Pandey, learned Counsel for the petitioner has raised the following submissions:

(a) Though the petitioner Is the registered owner of the vehicle no notice was Issued to her as a result of which the whole proceeding relating to confiscation is vitiated.

(b) The show cause notice is absolutely vague and it is well settled in law that unless allegations are put in a unequivocal and categorical manner the proceeding loses its sanguinity.

(c) The forums below have absolutely erred by recording a finding that the seized articles are forest produce when no notification was filed with regard to area in question to show that the items are seized from the protected forest area.

(d) The forums below have committed grave illegality by not accepting the transit pass to be valid on unacceptable technical ground and, therefore, the orders are to pave the path of extinction.

(e) There was no warrant or justification to direct confiscation of the vehicle in question when the Department has not been able to prove the allegations to the hilt.

To bolster his submission he has placed reliance on the decisions rendered in Mitthanlal Mishra Vs. State Government of M.P. and Others, and Chaudhary Ram Vs. State of H.P. and Another, .

Mr. Samdarshi Tiwari, learned Govt. Advocate for the respondents/State resisting the aforesaid submissions has raised the following proponements:

(i) The petitioner's husband was in the truck when the vehicle was seized and it is the petitioner who had executed a special power of attorney in favour of her husband to carry the boulders and also to contest in the proceedings and, therefore, the ground urged that no notice was served on the petitioner is untenable. That apart, at no point of time such a contention was raised before the original authority and nothing has been brought on record that any prejudice

has been caused.

(ii) As there is concurrent finding of the fact that the driver had given a statement with regard to the boulders being carried in the truck and at that juncture, he could not produce the transit pass, the order of confiscation cannot be flawed.

(iii) A notice was given to the husband of the petitioner who is the power of attorney holder as per Annexure-P/7 and hence, the law laid down in *Mitthanlal Mishra* (supra) is distinguishable.

(iv) The statement that shows cause notice is not correct as the same is quite clear and also perceivable on a mere perusal.

(iv) The order of confiscation is just, proper and warrant table as such forest offence cannot be lightly dealt with.

To appreciate the submissions raised at the Bar, I have carefully perused the orders passed by the forums below. The first aspect that is required to be dealt with is whether the petitioner being the registered owner should have been noticed or not. In the case of *Chaudhary Ram* (supra) it was held that when there was no material evidence on record relating to or concerning the requisite knowledge of unlawful use by the owner the order of confiscation is untenable. That apart, it was also held that show cause issued to the registered owner of the vehicle before confiscation was declared bad as it was vague and ambiguous. In *Mitthanlal Mishra* (supra) a learned Single Judge of this Court has held as under:

10. The submission of the learned Government Advocate that as they did not know that the petitioner was the owner, therefore, they were not required to issue notice to the owner, cannot be accepted. It would always be the duty of the Forest Department before proceedings to confiscate the property to issue notice to all concerned. It would also be the duty of the Authority to inquire about ownership of the property so that the person having interest or interested in the property is issued a notice and is heard in accordance with the spirit of the Act.

Sub-section (5) of Section 52 of the Act provides that no order of confiscation under Sub-section (3) shall be made if any person referred in Clause (b) of Sub-section (4) proves to the satisfaction of Forest Officer that the property was used without his knowledge or connivance or without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects for commission of forest offence. When the law provides that notice has to be issued, so that the person whose property is under the threat of confiscation may prove that the property was used without his knowledge or connivance, then non-issuance of notice and not-grant of an opportunity to such person would certainly vitiate the order of confiscation.

In the case at hand the petitioner has executed a power of attorney in favour of her husband. The husband was in the truck at the time of seizure. That apart, as

is manifest, he contested in the proceedings. In view of the aforesaid, I am disposed to think that no prejudice has been caused and the petitioner has been adequately represented and defended the case. The next issue that arises for consideration is whether the forums below have committed illegality by not accepting the transit pass which was produced by the husband of the petitioner in course of inquiry. The orders passed by the forums below, it is clear as day, that the same was not produced at the time of seizure. The Departmental authorities as well as the revisional authority, the learned Additional Sessions Judge, has arrived at an unequivocal conclusion that the transit pass bore different number. In view of the aforesaid obtaining factual matrix, the submission is sans substance and I unhesitatingly repel the same.

The next aspect that is required to be dealt with is whether the boulders which had been seized, could be regarded as forest produce. Submission of Mr. Pandey, learned Counsel for the petitioner is that no notification has been filed that they have been removed or excavated from the protected forest. The learned Sessions Judge has accepted as a matter of fact, that no notification has been produced, but, a significant and fertile one, the controversy cannot be allowed to rest in such a narrow spectrum. The appellate authority after due scrutiny of the material brought on record has recorded a categorical finding that the vehicle carrying boulders was chased by the forest officials and eventually was caught up on the road belonging to the Public Works Department. There can be no shadow of doubt that the loading of boulders originated in the forest. When there is ample material on record that the origin of the offence was in a protected forest filing of the notification is not imperative to make it a forest offence. That apart, the origin also gets bolstered inasmuch as when the boulders were carried without requisite transit pass.

In view of the aforesaid premises, I do not perceive any merit in this writ petition and accordingly the same stands dismissed. There shall be no order as to costs.