

(1998) 11 CAL CK 0035
In the Calcutta High Court

Case No : Civil Revisional Jurisdiction C.O. No. 294 of 1995

Smt. Krishna Sarkar

APPELLANT

Vs

Authorises Officer, Jalpaiguri Divisional and Others

RESPONDENT

Date of Decision : 13-11-1998

Acts Referred:

Constitution of India, 1950 — Article 227
Forest Act, 1927 — Section 59(A)(3), 59B(2)

Citation : (1999) 1 CALLT 425

Hon'ble Judges : Samaresh Banerjea, J

Bench : Single Bench

Advocate : Mr. Subir Banerjee, for the Appellant; Mr. Arun Kumar Mitra, for the Respondent

Judgement

S. Banerjea, J

1. In the instant revisional application under Article 227 of the Constitution, the petitioner has challenged the order dated 25th November, 1994, passed by the Additional District Judge, First Court, Jalpaiguri in Misc. Appeal No. 30 of 1992 affirming the order of the Authorised officer, Jalpaiguri District being No. 4524/15-213 dated 18th November, 1992 confiscating the vehicle of the petitioner along with the tools, forest produce seized u/s 59(A) (3) of the Indian Forest Act 1927.

2. At about 8.30 p.m. of 17th July, 1992 while the Range Officer, upper Tondur range along with other forest staff were patrolling along with periphery of the forest areas in Mongla Bari Basti on the fringe of Keriar Bandar forest near north Longdong, the concerned vehicle being an Ambassador car was coming towards them with head light on and as the Range Officer and other forest personnel tried to stop the car, the driver of the car fled away while the car was still running. The said car was found to contain forest produce in the form of sawn gamar timber planks and gamar block. The said car was brought to the Range office of the said Range where the car and the forest produce were seized under a seizure list as

no document in support of the forest produce were found in the car. Subsequently, a confiscation proceeding was started by the Authorised Officer, Jalpaiguri u/s 59A(3) of the Indian Forest Act, 1927 and due notices were sent to the registered owner of the car being the writ petitioner herein.

3. The petitioner replied to the show cause notice praying for returning of the vehicle contending, inter alia, the car in question was usually let on hire to Government offices and in the month of June 1992 the car met with an accident for which it was sent to a repairing garage for repairing work and the petitioner was informed that the car was ready for delivery after such repair on 17th July, 1992. The petitioner sent her driver to the said garage for taking delivery of the car for trial run, but as the said car did not return to the garage on 17th July, 1992 the owner of the garage made an inquiry into the matter and came to learn the car was also not taken to the petitioner whereupon he duly informed the petitioner, and petitioner made an enquiry and thereafter lodged a diary before the Inspector-in-Charge, Katwali Police Station in Jalpaiguri and subsequently, She came to know about the seizure of the vehicle.

4. It was, therefore, the specific contention of the petitioner before the Authorised Officer that although she was owner of the vehicle the forest produce was carried in the aforesaid unauthorised and illegal manner without her knowledge or connivance and therefore the vehicle should be released and she was not in charge of the vehicle on the relevant date.

5. The Forest Officer after considering all aspects of the matter relying on a Division Bench Judgment of this Hon'ble Court in the case of *Re: Authorised Officer, Jalpaiguri v. Susanta Banerjee and Ors.* reported in 1 1993 CLT HC, 289 held, Inter alia, that not only the petitioner as the owner of the vehicle was required to prove u/s 59 B(2) of the West Bengal Amendment of the Indian Forest Act, to the satisfaction of the Authorised Officer that she had no knowledge or connivance about the user of the offending articles or vehicle, she must also prove before the authorised Officer that her agent or the person-in-charge of the vehicle or the article in question had also no knowledge or connivance in the user of the same in commission of a forest offence and such person must be shown to have taken all reasonable and necessary precautions relating to such user, but in the instant case the writ petitioner has failed to prove the same.

6. The Authorised Officer on consideration of evidence came to a specific finding that the driver of the vehicle Sankar Chetri who was the agent of the petitioner was admittedly engaged in driving and was the actual person who was driving the vehicle and was in possession of the vehicle both prior to the date of occurrence as also on the date of occurrence and the said driver who is an agent of the petitioner committed offence. Consequently, inter alia on the finding that the petitioner had failed to prove that the vehicle in question was used for commission of the forest offence without the knowledge or connivance at least of the agent or the person-in-charge, confiscation of the vehicle was directed.

7. By the impugned appellate order the appellate authority dismissed the appeal affirming the finding of the Authorised Officer that u/s 59B(2) of the said Act, the owner of the vehicle has failed to prove that her driver who was the agent or who was at least a "person-in-charge" of the vehicle in question at the relevant point of time had no knowledge or connivance in the commission of the alleged forest offence. The appellate authority has also come to a specific finding on evidence and materials on records that it was the driver of the petitioner who was in possession of the vehicle and was driving the car on the date of occurrence and was in-charge of the same, but at the time of interruption of the vehicle he fled away.

8. The learned Advocate appearing for the petitioner has assailed the order of the Authorised Officer as also the appellate order, inter alia, on the ground that both the authorities have failed to consider that the car in question was used for commission of forest offence by carrying forest produce without the knowledge or connivance either of the petitioner herself or her agent or the person-in-charge. It has been strenuously argued that both the authorities have failed to consider as soon as the driver took the car from the repairing garage for trial and thereafter did not return he ceased to be an agent of the petitioner and/or driver of the vehicle and he was also not the person-in-charge when the vehicle was intercepted. It has also been contended that the Authorised Authorities have failed to consider that the petitioner had taken all reasonable and necessary precautions against the use of her car for committing offence by lodging diary before the police station and also informing the police station over phone as soon as she was informed that the car was taken by the driver and did not return it to the garage after the scheduled time.

9. Relying on a Division Bench Judgment of this Hon'ble Court in the case of State v. Gurbachan Singh reported in 1992C CrILR 385 it has been argued that merely because the driver of the vehicle might have committed an offence in course of his employment contrary to the terms of the employment, such illegal act of the driver cannot saddle the petitioner with any liability unless it is proved that the driver was the agent of the owner or he was the person-in-charge of the vehicle on behalf of the owner and that the vehicle was used in carrying forest produce illegally with the knowledge or connivance of the owner thereof.

10. In the aforesaid Division Bench Judgment it was held that such unauthorised act is committed by a driver in course of his employment contrary to the terms of his employment while returning with the vehicle, such illegal act of the driver cannot saddle the owner with any liability unless it is proved that the driver as the agent of the owner was the person-in-charge of the vehicle on behalf of the owner and vehicle was used in carrying forest produce illegally with the knowledge or connivance with the owner thereof.

11. Having heard the learned advocates for the parties and considering the application, I am of the view that no interference is called for with the impugned order under Article 227 of the Constitution.

12. In a proceeding under Article 227 of the Constitution it is not for the High Court to sit in appeal over the order passed by the said authorities. It is now well settled through judicial precedence that while exercising the power of general superintendence under Article 227 of the Constitution over the courts and tribunals subordinate to the High Court, the High Court may correct error apparent on the record or interfere where there is perversity in finding or violation of the natural justice or gross injustice has been done.

13. After going through the orders of the Authorised Officer as well as that of the Appellate Authority it appears to this court that after considering all materials and evidence on the records it has been found on fact that admittedly the driver of the petitioner who took delivery of the vehicle from the garage only was the agent of the petitioner he was also the person-in-charge of the vehicle at the time of commission of the forest offence.

14. There is no perversity in such finding at all. Although it has been strenuously argued that as soon as the vehicle was not taken back to the owner the driver ceased to be an agent of the vehicle and thereafter he was also not the person-in-charge of the vehicle, and both the petitioner and driver took all reasonable and necessary precautions against misuse of the vehicle, the same are without any merit.

15. It has been rightly held by the Appellate Authority the statement of the writ petitioner being the owner before the Authorised Officer that her brother-in-law Shri Anjan Sarkar informed Katwali Police Station, Jalpaiguri on 18th July, 1992 that Shri Sankar Chetri driver of the vehicle had taken passengers on hire to Siliguri clearly indicates that the petitioner and her in-laws had full knowledge that the Ambassador car in question was driven by the said driver with their consent and with their full knowledge and the said driver was, therefore, very much agent of the owner.

16. Section 52(3) of the West Bengal Amendment of the Indian Forest Act which authorises any Authorised Officer or Police Officer to require the driver or other person-in-charge of a vehicle to stop the same when he has reason to believe that such a vehicle is being used for transportation of any forest produce in respect of which a forest offence has been committed, clearly indicates that the driver of the vehicle is also the person-in-charge of the same.

17. Such position has also been clarified by the Division Bench of this Hon'ble Court in the case of Authorised Officer Jalpaiguri v. Susanta Banerjee reported in 1 1993 CLT 289 (paragraph 8).

18. The provisions in section 59B(2) of the Bengal Amendment of the Indian Forest Act, also clearly indicates that in a proceeding for confiscation, the owner of the vehicle seized for commission of forest offence, not only has to prove to the satisfaction of the Authorised Officer that the vehicle was used in carrying the forest produce without knowledge or connivance of the owner himself he is further required to prove that the vehicle was used for carrying such forest

produce without knowledge and connivance of the agent of the owner, if any, or the person-in-charge thereof. The owner is further required to prove that the owner and the person-in-charge had taken all reasonable and necessary precautions against use of the vehicle in carrying forest produce illegally.

19. Such position has been made absolutely clear by the Division Bench of this Hon''ble Court in the aforesaid case of Authorised Officer, Jalpaiguri v. Susanta Banerjee (supra).

20. In the said judgment after quoting 59B(2) of the said Act Their Lordship in paragraph 6 of the judgment held thus :--

"The requirements of section 59B(2) of the West Bengal amendment of the Indian Forest Act are two-fold. The owner has to prove to the satisfaction of the Authorised Officer that he had no knowledge or connivance about the user of the offending article or vehicle. He must also prove before the said authority that his agent or the person-in-charge of the vehicle or the article in question had also no knowledge or connivance in the user of the same in commission of a Forest offence. These persons must be shown to have taken all reasonable and necessary precautions relating to such user. In default, the vehicle cannot be exonerated from confiscation."

21. Similar interpretation of section 59B(2) of the Bengal Amendment of the said Act was made by another Division Bench of this Hon''ble Court in the case of Amir Sk. v. Divisional Manager, Kalimpong (General & Special) Division, West Bengal C.O. No. 1460 of 1990 (unreported judgment delivered on 20th June, 1990) which held the driver of the vehicle, found to be in possession of the vehicle as the person-in-charge and the agent of the another and further held that the contention that the driver was not authorised to carry any offending articles with a view to establish that he had no connivance in the matter as provided by the law and the connivance of the person-in-charge has clearly established in the case.

22. Accordingly it appears to this court neither any Jurisdictional error has been committed either by the Authorised Officer or Appellate Authority in passing the impugned order nor there is any perversity in such order nor there is any error apparent in the record warranting interference by this court under Article 227 of the Constitution.

23. The learned Advocate appearing for the petitioner, however, has further submitted that the order of the Appellate Authority is liable to be set aside as he has failed to consider the implication of the decision of another Division Bench in the case of State v. Gurbachan Singh reported in 1992 CriLj 385, where it has been held inter alia, that it will depend on the facts of each case whether the person who is found in possession of the vehicle is himself the owner or the agent of the owner or the person-in-charge of the vehicle and If an unauthorised act is committed by the driver in course of his employment contrary to the terms of his employment while returning with the vehicle such illegal act of the driver

cannot saddle the owner with any liability, unless it is proved that the driver was the agent of the owner or he was the person-in-charge of the vehicle on behalf of the owner.

24. Although the learned advocate appearing for the petitioner sought to contend relying on the said Judgment that the aforesaid observation of Their Lordships would show a contrary view in the interpretation of provisions of section 59B(2) of the said Act and the same being earlier decision will be binding a careful reading of paragraph 5 of the said Judgment where such observation have been made would not indicate that the same is not at all contrary view but such observation had been made under the facts and circumstances of this case.

25. In fact, the Division Bench in the case of Authorised Officer, Jalpaiguri v. Susanta Banerjee also had occasion to consider the aforesaid Division Bench Judgment in the case of State v. Gurbachan Singh (*supra*) but held the same to be distinguishable on facts (paragraph 6). In fact, Their Lordships held in paragraph 6 of the judgment held that the aforesaid case rendered in the Criminal Revision No. 2289 of 1989 State v. Gurbachan Singh, does not come in conflict with the decision in case of Susanta Banerjee and was decided on facts and not generally and it was observed in the said Judgment that facts of each case would determine status of the person, namely, as to whether he was the owner or the agent of the owner or the person-in-charge of the vehicle.

26. Here both the Forest Authorities and the Appellate Authorities held the driver to be an agent and the person in-charge of the vehicle.

27. The learned Advocate appearing for the respondents has relied in this connection on an unreported judgment of the Hon"ble Mr. Justice S.M. Mitra in the case of Khitish Sarkar v. Authorised Officer and Divisional Forest Officer, Coochbehar & Ors.

28. The learned advocate appearing for the petitioner has also submitted, *inter alia*, that this court has jurisdiction and power to direct imposition of fine in lieu of confiscation and it has been submitted that such power may be exercised in the instant case. Reliance has been placed on the unreported Judgments of Surya Kumar Tiwari J, in Criminal Revision No. 2430 of 1996 (Ratnakar Roy v. State) decided on 2nd September, 1996 and the decision of G.R. Bhattacharjee J. In the case of S. Balasubramaniam and others Vs. R. Muthu Krishnan and others, and the decision of Arun Kumar Dutta J, in the case of Prem Singh v. State reported in 1994 CriLj 340, where such power was exercised and fine in lieu of confiscation was directed after upholding the order of the appellate authority and the Authorised Officer.

29. I do not find any reason, however, to exercise such power under the facts and circumstances of this case. Such power of directing payment of fine in lieu of confiscation is not to be exercised as a matter of course or mechanically, however, harsh the provisions for confiscation may appear to be as contended in the aforesaid provisions of the said Act. The Legislature in its wisdom has

obviously introduced such harsh provision so that it may act as deterrent to commission of forest offence in the back ground of large scale commission of forest offence which is resulting in depletion of forest produce even affecting ecological balance. Under such circumstances in my view, such power of directing imposition of fine in lieu of confiscation should be exercised only if there is an extenuating circumstances in favour of the offender which in my view, is absent in the present case.

For the reasons stated above the present revisional application falls and the same is hereby dismissed. All interim order stands vacated. There will be no order as to costs.

30. Application Dismissed