

(2000) 12 CAL CK 0039
In the Calcutta High Court

Case No : Criminal Revisional Jurisdiction C.R.R. No. 1552 of 1993

Smt. Nazban Nissa

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 05-12-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Forest (West Bengal Amendment) Act, 1988 — Section 56(2), 59(A(3), 59(B)(2)

Citation : (2001) 1 CALLT 442

Hon'ble Judges : Debiprasad Sengupta, J

Bench : Single Bench

Advocate : Mr. Himangshu De, Mr. Arunabha Jana and Mr. S. Bandyopadhyay, for the Appellant; Mr. Tapas Middhya, for the Respondent

Judgement

D.P. Sengupta, J.—The present revisional application is directed against an order dated 22.7.93 passed by the learned Additional District Judge, Jalpalguri In Mtsc. Appeal No. 1/93 affirming the order of confiscation of vehicle No. WMQ 2311 passed by the Authorised Officer, Jalpaiguri by order dated 25.11.92 in Forest Case No. 4637/15-217.

2. The present petitioner, who is the registered owner of the truck, was informed that her truck was seized by the officer-in-charge of Teesta Check Post on the allegation of carrying 8 pieces of Sawan Timber illegally the value of which was estimated to be around Rs. 20,000/-. She was further informed that her driver, who was entrusted to deliver 298 packets of Carbon dust which was loaded at Gauhatl and to be delivered at Calcutta, had loaded the said timber in the truck to carry the same to Kishanganj. The driver and his associates were arrested and were subsequently released on bail.

3. Having received the Information about the seizure of her truck the petitioner made an application before the Authorised Officer praying for return of her vehicle bearing No. WBQ 2311 and in her application It was stated by her that although she Is the registered owner of the vehicle she had no knowledge or

connivance with the said offence in any way. It was further stated by her that there was no latches on her part in taking adequate precaution and she instructed the driver not to carry any illegal and Illicit thing in the truck. The petitioner appeared before the authorised officer and stated that she gave Instruction to her driver not to load any illegal goods in the truck and she also obtained an undertaking to that effect from her driver at the time of his appointment.

4. By an order dated 26.11.92 the Authorised Officer confiscated the vehicle owned by the petitioner u/s 59A(3) of the Indian Forest (W.B. Amendment) Act, 1988. Challenging the said order passed by the Authorised Officer, Jalpatguri, in Forest Case No. 4637/15-217, the petitioner preferred an appeal before the learned District Judge, Jalpaiguri. But the appeal was dismissed by the learned District Judge and the order of confiscation was affirmed. It is at this stage the petitioner came up before this Court.

5. Mr. Hlmangshu Dey, learned Advocate appearing for the petitioner submits that the driver of the petitioner gave in writing a personal covenant that he would not carry any Illegal and Illicit thing in the said truck and if any such act is done he would remain responsible for that. This itself shows that the petitioner being a lady had taken all necessary and possible precautionary measure before handing over the said vehicle to her driver.

Mr. Dey submits that neither the Authorised Officer nor the appellate Court considered this aspect. According to Mr. Dey the finding and observation of the learned District Judge, that it was the duty of the owner to become totally convinced of the financial capability of the driver to face the consequences of the misdeeds, is highly Illegal, absurd and Improbable. The learned Judge should have considered that if any person is financially solvent he would never approach anybody for his appointment as a driver.

6. Mr. Dey submits that in an appropriate case if the owner of the vehicle can establish that the carrying of forest produce was without the knowledge of the owner, the vehicle can not be confiscated. In support of his contention Mr. Dey relies on a Division Bench judgment of Orissa High Court reported in Gurudev Singh Rai Vs. Authorised Officer-cum-Asst. Conservator of Forests and Another, . From a reading of the said judgment it appears that the Division Bench of Orissa High Court expressed the view that inspite of the absence of any specific provision empowering the Authorised Officer to Impose fine in lieu of confiscation, such a power may be judicially engrafted in the said section so that in a fit case fine may be impose in lieu of confiscation. It was the view of the Division Bench of Orissa High Court that it was not beyond the competence of the High Court to read words in a statute which are not there. In paragraph 17 of the said Judgment it was held as follows :-

"Having deeply reflected over the question at hand. We are of the firm view that if the deficiency in section 56(2-a) of which reference has been made above,

would have come to the knowledge of the legislature, it would have definitely provided for Imposition of fine as an alternative punishment in those case where the authorities may not be satisfied about the desirability of confiscation and may not also feel happy in allowing the owner of the vehicle to go scot-free. We, therefore, read in the aforesaid section a power to impose fine in lieu of confiscation in appropriate cases. What could be the appropriate cases cannot be laid down with rigidity and the same has to be left to the satisfaction of the appropriate authority."

7. Mr. Dey next relies on a judgment of this Court reported In *Pijush Kanti Mondal Vs. State of West Bengal*, . In the said judgment the learned single Judge of this Court held as follows:--

"However the fact that the authorised officer has not the power to impose fine u/s 59A In lieu of confiscation of vehicle does not however in any way restrict or Impair the power of the High Court to pass appropriate order in a fit case u/s 482 Cr.PC for securing the ends of justice. The very fact that section 59A by its own term, in view of the use of the word "may" therein, gives a discretion to the authorised officer not to confiscate a vehicle even when the authorised officer is satisfied that a forest offence has been committed in respect of any forest produce which is the property of the State Government and which has been produced before him clearly indicates that an order of confiscation u/s 59A is not a "must" even when the other conditions of the said section are satisfied. The authorised officer although not empowered to impose a fine u/s 59 A in lieu of confiscation may still choose in view of the exceptional facts and circumstances of any case, not to order confiscation under the said section. The very fact that the exercise of the power of confiscation given in favour of the authorised officer u/s 59A is rather discretionary and not mandatory leaves ample opportunity for the High Court in the facts and circumstances of any particular case, to impose fine in lieu of confiscation of a vehicle in exercise of its inherent power u/s 482. Cr.PC where the High Court feels it necessary to do so for securing the ends of justice even where the provisions of section 59A are attracted and an order of confiscation had been passed by the authorised officer under that section."

8. The learned Advocate appearing for the State submits that sub-section (3) of section 59A read with sub-section (2) of section 59B of the Forest Act makes it clear that whenever a forest offence has been committed in respect of any forest produce, the vehicle used in committing such offence shall be liable for confiscation. Since there is no provision in the Act itself to impose fine in lieu of confiscation, it will not be proper for this Court to pass such an order giving an opportunity to the owner of the truck to avoid the order of confiscation by depositing fine in place of confiscation

9. I have heard the submissions of the learned Advocates of the respective parties. It have carefully gone through the Judgment referred to above. I find sufficient merit in the submissions made by Mr. Dey, learned Advocate of the petitioner. I agree with the view expressed by the learned single Judge of this

Court in the case of Pijush Kanti Mondal (supra) that the fact that the Authorised officer is not empowered to impose fine in lieu of confiscation of vehicle u/s 59A of the Forest Act, does not take away or restrict the power of the High Court u/s 482 of the Code of Criminal Procedure to pass an order in an appropriate case imposing fine in lieu of confiscation where the High Court feels it necessary to secure the ends of Justice.

10. So far as the order of confiscation is concerned, I do not find any reason, in view of the materials on record, to interfere with any of the findings of the Authorised officer as also of the learned Additional District Judge who heard the appeal. The order of confiscation is accordingly upheld. But considering the facts and circumstances of the case and the valuation of the seized timber, which was assessed by the Authorised Officer to be around Rs. 20,000/-, I am of the view that it will be proper to give an opportunity to the owner of the vehicle to avoid the order of confiscation of the vehicle by depositing a fine in lieu thereof. Accordingly I direct the Authorised Officer, Jalpaiguri District to release the vehicle bearing No. WBQ 2311 to its registered owner on payment of fine of Rs. 20,000/-within a period of four weeks from the date of this order. I also make it clear that in case the owner of the vehicle fails to make such payment within the period of four weeks, the order of confiscation of the vehicle as passed by the Authorised officer and affirmed by the appellate Court shall be given effect to. The imposition of the fine will be in lieu of confiscation of the vehicle, if paid within the period as stated above.

The present revisional application accordingly stands disposed of. Let an urgent xerox certified copy of this order be given to the learned advocates for the respective parties at an early date, if applied for.

11. Application disposed of