

(2009) 03 KAR CK 0073
In the Karnataka High Court
Case No : Writ Appeal No. 211 of 2009

Sri Anil Colaco

APPELLANT

Vs

The Authorized Officer and Deputy Conservator of Forest,
Koppa Division and The Range Forest Officer, Forest Mobile
Squad

RESPONDENT

Date of Decision : 26-03-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Forest Act, 1963 — Section 71 A, 71 A (1), 71 G

Citation : (2009) 5 KarLJ 249

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Shashi Kiran Shetty, for the Appellant; B. Veerappa, Govt. Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

V.G. Sabhahit, J.—This appeal is filed by the petitioner in W.P. No. 12624/2006 being aggrieved by the order dated 11.12.2008, wherein the learned Single Judge has rejected the writ petition by holding that no ground is made out for interfering with the order dated 8.4.2004 passed by the Fast Track Court - II, Chikmagalur, in Crl.A No. 61/1999 confirming the order dated 7.4.1999 passed by the 1st respondent, confiscating the Canter No. KA 18/1032 belonging the appellant - writ petitioner.

2. The appellant herein filed W.P. No. 12624/2006 seeking for quashing the order dated 7.4.1999 passed by the 1st respondent as per Annexure-C to the writ petition and also to quash the order dated 8.4.2004 passed by the Past Track Court-I at Chikamagalur in Crl.A No. 61/1999 produced at Annexure-D to the writ petition.

3. It is averred in the writ petition that the petitioner is the owner of a vehicle bearing Regn. No. 18/1032, a Canter Mitsubishi. It is averred that on 27.8.1993,

on Koppa- Jayapura Road, some servants of the petitioner were allegedly found transporting rose wood pieces and consequently the vehicle in question was seized by the 2nd respondent. The respondents initiated criminal proceedings on the said allegations before the jurisdictional Magistrate Court in CC No. 698/2004 and the same ended in acquittal on 30.4.1997 and the vehicle was given to interim custody to the petitioner on furnishing a security. It is further averred that the 2nd respondent initiated proceedings u/s 71(A) of the Karnataka Forest Act, 1963 (hereinafter referred to as "Act"). The petitioner filed objections to the said proceedings and the 2nd respondent, without considering the merits of the case, directed him to surrender the vehicle and in default; ordered that the bond will be executed. The petitioner filed an appeal against the said order before the learned Sessions Judge, Chikamagalur and the same was dismissed. The petitioner preferred Crl.RP No. 623/2004 challenging the impugned orders before this Court and the same was admitted on 19.5.2005 and an interim order was granted. Having regard to a reference case wherein it was decided that criminal revision petition is not maintainable and remedy to the petitioner is to file a writ petition under Articles 226 and 227 of the Constitution, the criminal revision petition came to be dismissed as per Annexure-F to the writ petition and wherefore the writ petition was filed by the petitioner seeking for quashing of the orders passed by the respondents on the ground that the said orders are illegal and contrary to law and facts on record and the same are liable to be quashed.

4. It was urged in the writ petition that the learned Sessions Judge has grossly erred in dismissing the appeal without properly appreciating the materials on record and there is no evidence to prove that the rosewood belongs to the government. The prosecution launched against the offenders in the said case has ended in acquittal and hence, this ground alone, the proceedings ought to have culminated in releasing the vehicle and the order of confiscation is illegal and the seizure of vehicle is not in accordance with law. The confiscation of the vehicle has resulted in miscarriage of justice.

5. The learned Single Judge, after hearing the learned Counsel appearing for the petitioner and the learned Government Pleader appearing for the respondents by order dated 11.12.2008, held that the proceedings under Sections 71-A to 71-G of the Act are statutory and independent of the outcome of criminal proceedings for commission of offence under the Act and that the Authorised Officer, in the instant case, being satisfied that the vehicle in question was used for committing a forest offence was justified in passing the order of confiscation. The learned Single Judge, after scrutiny of the orders impugned, held that the same disclosed that the Authorised Officer having appreciated the evidence of PWs. 1 and 2 and the panchanama of the seizure of the forest produce was satisfied that a forest offence was committed in respect of the seized property. Moreover, the petitioner - appellant herein had not taken necessary precaution and therefore cannot be said to have had no knowledge or that he had not connived in the commission of the forest offence by use of the motor vehicle and the mere statement that he had entrusted his vehicle to the driver to take the vehicle to his friend,

Prabhakar, and that the petitioner on account of political rivalry was framed, are without substance and in the absence of relevant material constituting substantial legal evidence of the said fact The order of confiscation confirmed in the appeal did not call for interference and the exercise of jurisdiction by this Court under Article 226 of the Constitution of India and in the light of the observations of the Apex Court in the case of Surya Dev Rai Vs. Ram Chander Rai and Others, and accordingly dismissed the writ petition. Being aggrieved by the said order of dismissal dated 11.12.2008, this writ appeal is filed.

6. We have heard the learned Counsel appearing for the appellant and the learned Additional Government Advocate.

7. Learned Counsel appearing for the appellant submitted that the criminal case had been instituted against the person, who alleged to have transported the rose wood logs in the lorry and the said case has ended in acquittal in CC No. 698/1994 on 30.4.1997 holding that the seizure had not been complied with the provision of Section 62(3) of the Act and the benefit of doubt was given to the accused and the seizure of logs from the lorry belonging to the petitioner has not been proved and no ground had been made out for confiscation of lorry belonging to the petitioner. Therefore, the order of confiscation is illegal and unsustainable in the eye of law. Accordingly, the dismissal of the writ petition confirming the order of confiscation cannot be sustained and the same is liable to be set aside.

8. On the other hand, the learned Additional Government Advocate submitted that the order of acquittal passed by the Criminal court would not lead to the conclusion that the lorry belonging the petitioner/appellant is not liable to be confiscated. The confiscation of the vehicle is made on the basis of the material placed before the court below. The learned Single Judge has declined to interfere with the order of confiscation in confirming the order passed in criminal appeal. The order passed by the learned Single Judge does not suffer from illegality.

9. We have considered the contentions of the learned Counsel appearing for the appellant and learned Government Advocate and scrutinized the material on record.

10. The scrutiny of the material on record would clearly show that the appellant/writ petitioner is the registered owner of a Canter Mitsubishi, a mini lorry, bearing Regn. No. KA-18/1032. Further, it is clear from the material on record that on receiving credible information that the rosewood logs were being illegally transported in the lorry on Koppa - Jayapura road, the Range Forest Officer, Koppa alongwith his staff had stopped the vehicle at Koppa - Jayapura junction and intercepted the vehicle bearing Regn. No. KA-18/1032, which admittedly belongs to the appellant herein and it was found that there were three persons in the lorry and also found 21 beete sizes measuring 0.938 m³, rosewood logs. The same were seized alongwith the lorry belonging to the appellant/writ petitioner. The said three persons were produced before the Judicial Magistrate. The lorry

was produced before the Authorised Officer for initiating confiscation proceedings u/s 71A of the Karnataka Forest Act, 1963. The fact that the Authorised Officer issued a show cause notice to the appellant/writ petitioner and thereafter passed an order of confiscation is not disputed. The defence of the appellant/writ petitioner before the Authorised Officer is that he was not aware of the lorry being used for transporting the rosewood logs and he had handed over the lorry to his friend. Therefore, from the defence of the appellant/writ petitioner is clear that the Range Forest Officer, Forest Mobile Squad, Koppa, has seized the lorry belonging to the appellant/writ petitioner as it was found that 21 logs of rosewood were transported in the said lorry without valid permit and three persons found in the lorry were produced before the Judicial Magistrate and also a criminal case filed against them for having committed the offence punishable under the Karnataka Forest Act is disputable. The evidence of the appellant/writ petitioner before the Authorised Officer would also show that apart from stating that the lorry was being illegally used for transporting the rosewood logs without his knowledge, no other defence whatever is taken. It is further clear from the evidence of appellant that the persons found in the lorry were working under the appellant/writ petitioner as employees. However, what is contended by the learned Counsel appearing for the appellant/writ petitioner is that the persons, who were arraigned as accused in a criminal case, have been acquitted by giving benefit of doubt in CC No. 698/1994 on the file of the learned JMFC, Koppa by order dated 30.4.1997 and the vehicle of the appellant/writ petitioner could not have been confiscated. There is no merit in the contention of the learned Counsel appearing for the appellant/writ petitioner. It is clear from the provisions of the Karnataka Forest Act that the proceedings before the Authorized Officer for confiscation of the forest produce together with tools and vehicle used in committing of offence and filing of chargesheet against the accused for having committed the offences punishable under the provisions of the Karnataka Forest Act are entirely different proceedings and the same is evident from the provisions of Sections 71A(1) and (2) of the Karnataka Forest Act, which read as follows:

71A. Confiscation by Forest Officers in certain cases.- (1) Notwithstanding anything contained in the foregoing provisions of this Chapter [or in any other law], where a forest offence is believed to have been committed in respect of timber, [ivory, [gulmavu (machilus marantha) bark, dalchini bark, Halmaddi (exudation of aliantus malabricum), canes], firewood and charcoal which is the property of the State government or in respect of sandalwood], the officer seizing the property under Sub-section (1) of Section 62 shall, without any unreasonable delay produce it, together with all tools, ropes, chains, boats, vehicles and cattle used in committing such offence, before an officer authorised by the State Government in this behalf by notification in the official Gazette, not being below the rank of an Assistant Conservator of Forests (hereinafter referred to as the authorised officer).

(2) Where as authorised officer seizes under Sub-section (1) of Section 62 any

timber, [ivory, firewood [gulmavu (machilus marantha) bark, dalchini bark, halmaddi (exudation of ailantus amalbricum), canes] and charcoal which is the property of the State Government or any sandalwood], or where any such property is produced before an authorised officer under Sub-section (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 all tools, ropes, chains, boats, vehicles and cattle used in committing such offence.

Further, Section 71B of the Karnataka Forest Act reads as follows:

71B. Issue of show cause notice before confiscation u/s 71A. - (1) No order confiscating any timber, sandalwood, charcoal, firewood, [gulmavu (machilus marantha) bark, dalchini bark, halmaddi (exudation of ailantus malabriculum), canes], ivory, tools, ropes, chains, boats, vehicles or cattle shall be made u/s 71A except after notice in writing to the person from whom it is seized and considering his objections, if any:

[Provided that no order confiscating a motor vehicle shall be made except, after giving notice in writing to the registered owner thereof, if in the opinion of the authorised officer it is practicable to do so, and considering his objections, if any.]

(2) Without prejudice to the provisions of Sub-section (1), no order confiscating any tool, rope, chain, boat, vehicle or cattle shall be made u/s 71A if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, sandalwood, charcoal, firewood [gulmavu (Machilus marantha) bark, dalchini bark, Halmaddi (exudation of Ailantus malabriculum), canes] or ivory without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the tool, rope, chain, boat, vehicle or cattle and that each of them had taken all reasonable and necessary precautions against such use.

11. In view of Sections 71A and 71B of the Karnataka Forest Act as culled out above, the confiscation proceedings are initiated whether or not a prosecution is instituted for the commission of such forest offence.

12. The Hon'ble Supreme Court in the case of Divisional Forest Officer and Another Vs. G.V. Sudhakar Rao and Others, has clearly observed that confiscation proceedings is a separate and distinct proceedings from that of a trial before the criminal court for commission of an offence. The relevant para of the judgment reads as follows:

12. A close, careful and combined reading of the various Sub-sections of Section 44, Section 45 and Section 58A of the Act as introduced or amended by Act 17 of 1976 leaves no doubt that the intendment of the Legislature was to provide for two separate proceedings before two different forums and there is no conflict of jurisdiction as Section 45, as amended by the Amendment Act, in terms curtails

the power conferred on the Magistrate to direct confiscation of timber or forest produce on conviction of the accused. The conferral of power of confiscation of seized timber or forest produce and the implements, etc., on the Authorized Officer under Sub-section (2A) of Section 44 of the Act on his being satisfied that a forest offence had been committed in respect thereof, is not dependent upon whether a criminal prosecution for commission of a forest offence has been launched against the offender or not. It is a separate and distinct proceeding from that of a trial before the Court for commission of an offence. Under- Sub-section (2A) of Section 44 of the Act, where a Forest Officer makes report of seizure of any timber or forest produce and produces the seized timber before the Authorized Officer along with a report u/s 44(2), the Authorized Officer can direct confiscation to Government of such timber or forest produce and the implements, etc., if he is satisfied that forest offence has been committed, irrespective of the fact whether the accused is facing a trial before a Magistrate for the commission of a forest offence u/s 20 or 29 of the Act.

13. The provisions of Sections 71A and 71B referred to above are identical to Sections 44 and 45 of Andhra Pradesh Forest Act. Following the decision of the Hon"ble Supreme Court referred to above, this Court in the case of D.S. Vijaya Kumar Vs. Deputy Conservator of Forest, Hassan Division, Hassan, , has held that the provisions for confiscation of the forest produce and the tools and vehicle used in committing the forest offence is independent proceeding. Mere fact that acquittal of the accused by the criminal court would not affect the confiscation proceedings before the Authorised Officer. In a recent decision of this Court in the case of Sri H.T. Ganesh Vs. The State of Karnataka, following the earlier decision in the case of Ramesh N. Dixit Vs. State of Karnataka, , it has been held that the provisions for confiscation of the forest produce together with tools and vehicle used for commission of offence are independent proceedings and it is for the accused, who is the owner of the vehicle, to establish before the Authorized Officer that nor his agent or any person in charge of the vehicle had connived in the commission of the offence and that they had taken all reasonable and necessary precautions against such illegal use of the vehicle. The material on record in the present case is considered in the light of the above principles laid down in the cases referred to above. The evidence of the Range Forest Officer, Forest Mobile Squad, Koppa, who is examined as PW.2 and PW. 1 - Forest Guard before the Authorised Officer and the contents of mahazar - Ex.P1 and also the defence taken by the appellant/writ petitioner would clearly show that the vehicle belonging to the appellant/writ petitioner has been intercepted and it was found that three persons, who were the employees of the appellant/writ petitioner, were illegally transporting the rosewood logs in the said lorry without any permit. Section 104A of the Karnataka Forest Act states that no person other than the State Government or the officers of the State Government not below the rank of a Deputy Conservator of Forest, authorised in writing in this behalf, shall purchase or transport any blackwood or bite tree (*Dalbergia Latifolia*) or timber thereof. In the absence of any permission obtained, it is clear that the said

rosewood logs were transported illegally in the vehicle belonging to the appellant/writ petitioner and the persons, who were apprehended, were also working under the appellant/writ petitioner. It is clear from the evidence of PW. 1 and Ex.P1 as referred in the order of the Authorised Officer and the defence taken by the appellant/writ petitioner would show that the appellant/writ petitioner himself has admitted that the vehicle was found transporting the rosewood logs illegally. Unless the appellant/writ petitioner is able to prove himself that his driver and others were found transporting the roosewood logs in the lorry without his knowledge and had taken all reasonable and necessary precautions against such illegal use of the vehicle, the confiscated vehicle of the appellant/writ petitioner cannot be discharged the burden cast upon him u/s 71B of the Karnataka Forest Act. The appellant/writ petitioner has not even chosen to examine the driver of the vehicle before the Authorised Officer. Therefore, the concurrent finding arrived at by the Authorized Officer and the Appellate Court is justified and does not suffer from any error or illegality as to call for interference in exercise of writ jurisdiction of this Court.

14. The learned Single Judge after considering the provisions of the Karnataka Forest Act and the material on record and the finding of the Authorised Officer and the Appellate Court has rightly held that no ground is made out for interfering with the said finding and declined to exercise the power of this Court. In view of the above said material on record, we are of the view that the finding of the learned Single Judge is justified and does not suffer from any error or illegality as to call for interference in this intra court appeal. Accordingly, we hold that there is no merit m. this appeal and the appeal is dismissed with cost of Rs. 10,000/- to be payable within two months from today.