
(1999) 06 CAL CK 0020
In the Calcutta High Court
Case No : F.M.A. No. 989 of 1991

State and Others

APPELLANT

Vs

Santosh Saha

RESPONDENT

Date of Decision : 09-06-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Forest Act, 1927 — Section 59A, 59B
West Bengal Forest Produce Transit Rules, 1959 — Rule 8(1)

Citation : AIR 2000 Cal 104 : (2000) 1 ILR (Cal) 273

Hon'ble Judges : Satyabrata Sinha, Acting C.J.; M.H.S. Ansari, J

Bench : Division Bench

Advocate : Smritikana Mukherjee, for the Appellant; B.R. Bhattacharyya and Amalesh Roy, for the Respondent

Final Decision : Dismissed

Judgement

1. The instant appeal is directed against an order dated 15-1-90 passed in C. O. 12330(W) of 1989 by a learned single Judge of this Court allowing the writ application of the respondent-writ -petitioner and directing return of the seized goods to the respondent-writ-petitioner forthwith.
2. In coming to the said conclusion the learned Judge has noticed that the procedures prescribed had not been complied with by the forest authorities in effecting the seizure or confiscation. The learned Judge also held that the search was not conducted in accordance with the rules, inasmuch as, signature of any independent witness was not taken in the seizure memo. The provisions of Rule 8(1) of the West Bengal Forest Produce Transit Rules have also not been complied with insofar as no notice was issued to the owner nor a copy of the seizure list was furnished to him.
3. The more important fact noticed by the learned trial Judge was the discrepancy between the search warrant and other documents whereby the premises were searched and forest produce seized.

4. It may be noticed that the endorsement made on the reverse of the search warrant stated that "timbers are not bearing any government hammer impressions and found illegal". The same bears the date as 21-8-87. Witnesses to the said search are all forest officers and not independent witness. From the seizure list prepared and signed on 22-8-89, it is seen that in Column No. 7 it reads as, "Seizure hammer impression and T. M. N. B. Reference". It has been written opposite thereto as. "COB/SZ/88 T. M. N. B. Ref :--

Page 8-59/734. This discrepancy was taken serious note of by the learned trial Judge and he was of the view that the search and seizure have not been made in accordance with the Rules, the entire proceeding including the order of confiscation are liable to be set aside. The seizure appears to have been made in terms of the West Bengal Forest Produce Transit Rules, 1959. Rule 8(1) whereof reads thus :--

"8(1) Any Forest Officer who has seized any forest-produce under Rule 7 shall-

(a) immediately issue a written notice to the owner of such forest-produce or if the owner is unknown to the person in charge or possession of such forest-produce at the time of seizure, calling upon him to produce proof of the origin of the forest-produce and his title thereto within thirty days from the date of issue of such written notice, a copy of which shall be pasted on a Notice Board at the nearest forest office, and

(b) submit a seizure report in the prescribed form without delay to the Magistrate having jurisdiction to try the offence on account of which the seizure has been made."

The learned trial Judge has rightly observed that neither requirement of the said Rules nor provisions of Section 100 of the Code of Criminal Procedure had been complied with. In that view of the matter, the seizure of the timber has rightly been held to be illegal. As regard the order of confiscation, it is relevant to reproduce the provisions of Sections 59A and 59B of the Indian Forest (West Bengal Amendment) Act, 1988-

"59A.-- 1. Notwithstanding anything contained in the foregoing provisions of this chapter or in any other law for the time being in force, where a forest-offence is believed to have been committed in respect of the timber or other forest produce which is the property of the State Government, the Forest Officer or the Police Officer seizing the timber or other forest produce under Subsection (1) of Section 52 shall, without any unreasonable delay, produce the same together with all tools, ropes, chains, vehicles, and cattle used in committing the offence. before an officer of a rank not inferior to that of an Assistant Conservator of Forests, authorised by the State Government in this behalf by notification in the official Gazette (hereinafter referred to as the authorised officer)."

59B.-- (1) No order confiscating any property or tools, ropes, chains, boats, vehicles or cattle shall be made u/s 59A except after giving a notice in writing to

the owner of, or the person from whom, such property or tools ropes, chains, boats vehicles or cattle have been seized, for showing cause as to why the same should not be confiscated and considering his objections, if any;

Provided that no order confiscating any motor vehicle shall be made except after giving a 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."

5. According to the appellant, there was nobody to receive the notice purported to have been issued. However, from Annexure "C" to the affidavit-in-opposition it is seen that one Bhanwar Lal Chhatani was called upon to produce proof of origin of forest produce seized on 21-8-89. The said notice reads as under :

"You are hereby called upon to produce proof of origin of Forest Produce No. seized u/s 52 of I. F. A., 1927 and u/s 7 of West Bengal Forest Produce Transit Rules, 1959 and title thereto within 30 (thirty) days from the date of issue of these notice to the office of the undersigned failing which necessary legal action will be taken against without further notice to you.

PL also show cause as to why the seized timbers will not be confiscated to State."

6. It must be noticed that the aforesaid notice does not conform to the requirements of the provisions of Section 59A of the Indian Forest Act. It lacks in material particulars which were required to be stated therein.

7. The petitioner-respondent appears to have made an application claiming ownership of the goods seized and seeking return thereof on 27-9-89. However, despite the same no opportunity was afforded to him of being heard in the matter nor any notice as envisaged u/s 59A was served upon him. Instead, by a letter dated 30-9-89, the writ petitioner-respondent was informed -- "With reference to above, I regret to inform you that the seized timbers cannot be released since the seized timbers are Illegal having no Government hammers even In a single piece for which you cannot produce any valid documents in support of this seized timbers within the stipulated time. So produce is hereby confiscated to the State. The last portion of the above extract as underlined is in the handwriting of the officer concerned as was done while issuing the notice dated 22-8-89. The aforementioned notice and the said order depict total non-application of mind on the part of the appellant. In our view the said order cannot be characterised as one passed under the Act confiscating the forest produce.

8. Mrs. Mukherjee, learned counsel appearing on behalf of the appellant, however, submitted that as there exists a provision for appeal, this Court ought not to have exercised its jurisdiction. The said contention is without any substance inasmuch as, as indicated hereinbefore the entire search and seizure as also the order of confiscation having been passed by the Divisional Forest Officer without jurisdiction, the same are nullities. In *Wazir Chand Vs. The State of Himachal Pradesh*, , the Supreme Court held that illegal seizure of goods

would amount to infringement of fundamental rights and the High Court under Article 226 of the Constitution of India would be entitled to direct return of such goods. The aforementioned decision of the Supreme Court has been followed by a Division Bench of this Court in Keshoram Industries and Cotton Mills Ltd. v. S. K. Rattan reported in 78 CWN 121.

9. For the reasons afore-stated, we find no merit in the appeal and the same is, accordingly, dismissed. However, there will be no order as to costs.

10. Xerox certified copy of this order, if applied for urgently, shall be given on priority basis.