

(2023) 11 GAU CK 0026

In the Gauhati High Court

Case No : Criminal Petition No. 1286 Of 2022

State Of Assam And Anr.

APPELLANT

Vs

Faijuddin Ahmed @ Faizuddin Ahmed

RESPONDENT

Date of Decision : 21-11-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482

Assam Forest Regulation Act, 1891 — Section 40, 41, 49, 49(4), 49(5)(b), 49(6), 51

Citation : (2023) 11 GAU CK 0026

Hon'ble Judges : Mitali Thakuria, J

Bench : Single Bench

Advocate : D.. Gogoi, S. K. Nargis

Final Decision : Dismissed

Judgement

1. Heard Mr. D. Gogoi, learned Standing Counsel, Forest Department representing the petitioners. Also heard Mr. S. K. Nargis, learned counsel for the respondent.

2. This application is filed under Section 482 of Code of Criminal Procedure, 1973 praying for setting aside and quashing the impugned Judgment and Order dated 20.09.2022 passed by the learned District Judge, Biswanath at Biswanath Chariali in Misc.Appeal No.01(S-2)/2022, whereby the order of confiscation dated 29.04.2022 passed by the Divisional Forest Officer, Sonitpur in OR No.D/04 dated 02.12.2021 was set aside and further directed to cease the confiscation proceeding relating to the offending vehicle bearing Registration No.AS-32-C-0766 and also allowed the custody of the offending vehicle to its owner i.e. the opposite herein.

3. The brief facts of the prosecution case is that on 02.12.2021, during routine patrolling in Koroioni Samardalani area, one vehicle bearing registration No. AS-32C-0766 was detected by the range officer, Diplonga Range carrying timber in the vehicle. The vehicle was stopped by the Forest Officer and they asked for

valid documents of the timber loaded in the vehicle. However, the driver of the vehicle failed to produce any valid documents relating to the loaded timber. Thereafter, the offending vehicle along with the loaded timber was seized. After recording the statement of the driver of the offending vehicle, the vehicle along with the driver was brought to the concerned Range office. Accordingly, notices were served to the driver and owner of the offending vehicle to produce the documents relating to the loaded timber, however, they failed to produce any documents. Though the driver claimed that he collected the timber from the PP land of one Biju Devi, however, no certificate of origin, permission for sawing and transportation could be produced. As such, a case was registered vide OR No. D/04 dated 02.12.2022 at Diplonga Range and the Offence Report was submitted to the Authorized Officer-cum-Divisional Forest Officer, Sonitpur, East Division, Biswanath for initiation of the confiscation proceedings.

4. After, receipt of the Offence Report relating to OR No.D/04 dated 02.12.2021, notice under Form No.31(B) were served to the driver as well as the owner of the vehicle to show cause as to why this seized vehicle should not be confiscated to the State of Assam and in reply of which the driver of the said vehicle confessed that he transported the seized timber illegally from Samardalani. However, the owner of the said vehicle also confessed that his driver transported the timber illegally but the same was not within his knowledge and accepted the guilt of this driver. Thereafter, another notice was served upon the owner of the vehicle under Form 31(C) for producing the Registration Card and other relevant documents. However, the owner failed to produce the Registration Card of the offending vehicle and other documents.

5. After completion of the investigation and from the recorded statements, it was found that offending vehicle was used in illegal transportation of timber and as such, violated the provision of Section 40 Assam Forest Regulation Act, 1891 (in short AFR Act) with amendment in 1995 and as such, the accused persons are liable to be punished under Section 41 of AFR Act.

6. Thus, considering the above facts and circumstance of this case, the Divisional Forest Officer-cum-Authorized Officer, Sonitpur East Division, Biswanath Chariali, being satisfied that prima facie, an offence under AFR Act was committed and the offending vehicle bearing Registration AS-32C-0766 was involved in the illegal transportation of forest produce in violation of rules under Section 40 of the AFR Act (amended up-to date), passed an order dated 29.04.2022, thereby, confiscated the seized timber including the offending vehicle bearing Registration No. AS-32C-0766 to the State of Assam along with the timber. Accordingly, the Misc. Appeal No.1 (S-2)/2022.

7. On being aggrieved by the order of confiscation, the respondent preferred a Misc. Appeal before the learned District Judge, Biswanath. Hearing both the parties, vide Judgment dated 20.09.2022, the learned District Judge, Biswanath at Biswanath Chariali had set aside the Order of confiscation dated 29.04.2022 and further directed the Divisional Forest Officer-Cum-Authorized Officer,

Sonitpur East Division, Biswanath Chariali to cease the confiscation proceeding and to give the zimma of the offending vehicle by taking a bond of Rs.30,00,000/-(Rupees Thirty lakhs) only. The learned District Judge, Biswanath Chariali, while interfering with the confiscation proceeding in his judgment dated 20.09.2022, observed that if the driver carried the timber without proper documents, then it was without the prior knowledge of the owner of the vehicle. It was further observed that as the vehicle is purchased on instalment from the bank and he is paying Rs.16,324/- (Rupees sixteen thousand three hundred twenty-four) only per month; the owner/opposite party has been suffering financial loss and he would be unable to pay the instalment if the vehicle is kept in the custody of the government. It is also observed that no purpose would be served if, vehicle, which was purchased on loan, is confiscated as the vehicle is no more required for the purpose of investigation.

8. On being aggrieved and dissatisfied with the Judgment dated 20.09.2022 passed by the learned District Judge, Biswanath Chariali in Misc. Appeal No.01(S-2)/2022, whereby, the Order dated 29.04.2022 passed by the Divisional Forest Officer-cum-Authorized Officer, Sonitpur East Division, Biswanath Chariali confiscating the vehicle bearing Registration No.AS-32C-0766 along with the timber in OR No.D/04 dated 01.12.2021, the petitioners, being the State of Assam and the Divisional Forest Officer-cum-Authorized Officer, have preferred this petition.

9. Mr. D. Gogoi, learned Standing Counsel has submitted that the learned Trial Court erred both in law and facts in setting aside the Order dated 29.04.2022 and allowing the Zimma of the vehicle of the opposite party and as such, the impugned Judgment dated 20.09.2022 is liable to be set aside and quashed. He also submits that the learned Trial Court had failed to appreciate the fact that there was no irregularity in the confiscation proceeding. The opposite party has been given adequate opportunities and notices were also duly served to them. Due procedure was followed in the confiscation proceeding. Under such circumstances, setting aside the confiscation order is absolutely bad in facts and law. The observation made by the Trial Court that if the driver carried the timber without proper documents, then it would be without the prior knowledge of the owner of the vehicle, is absolutely a perverse finding and not based on proper facts of the case.

10. He also submits that the Trial Court failed to consider that the vehicle in question has already been confiscated by Order dated 29.04.2022 passed by the Divisional Forest Officer-Cum-Authorized Officer in OR No.D/04 dated 01.12.2021. It is settled position of law that once the confiscation proceeding is initiated, the offending vehicle should not be released to the offender or accused.

11. Further, it has been submitted by the learned Standing Counsel that the learned Trial Court while interfering the order dated 29.04.2022, had drawn the principles enumerated in the case of Sunderbhai Ambalai Desai and thus, observed that no propose would be served by keeping the vehicle in the custody

of government when it was purchased on loan. Such observation is wholly unwarranted when confiscation proceeding is pending or initiated against the offending vehicle for commission of forest offence. The Hon'ble Apex Court has not expressed the view that custody of forest produce and vehicle used in commission of forest offence should be given to anyone claiming ownership and in fact, it lays down that in case of such items, the same should be disposed by proper auction as fast as possible after preparing a proper panchanama. The same principle would be applicable in the present case as well, since, the vehicle has been used for commission of the forest offence and if the custody is given to its owner, then, it would only allow him to further perpetuate his crime. The general principle pertaining to release of the seized valuables, vehicles etc. would not be applicable in the case of forest offence where the seized object is used in commission of forest offence.

12. In view of the matter, the order dated 20.09.2022 passed by the learned District Judge, Biswanath Chari in Misc. Appeal No.1(S-2)/2022 whereby setting aside the order of confiscation dated 29.04.2022 passed by the Divisional Forest Officer-cum-Authorized Officer in OR No.D/04 dated 02.12.2021 is liable to be set aside and quashed.

13. In support of his submission, he relies on the decision passed by the Hon'ble Apex Court in the case of State of Karnataka Vs. K. Krishnan, reported in 2000 (7) SCC 80, wherein he emphasized mainly in paragraph No.7 of the said judgment, which is as under:-

"Para-7 Learned counsel appearing for the appellant-State has submitted and we agree that the provisions of the Act are required to be strictly complied with and followed for the purposes of achieving the object for which the Act was enacted. Liberal approach in the matter with respect to the property seized, which is liable to confiscation, is uncalled for as the same is likely to frustrate the provisions of the Act. Before passing an order for releasing the forest produce or the property used in the commission of the forest offence, the Authorized Officer or the Appellate Authority has to specify the reasons which justify such release, apparently, prima facie excluding the possibility of such forest produce or the property being confiscated ultimately. Generally, therefore, any forest produces and the tools, boats, vehicles, cattles, etc., used in the commission of the forest offence, which are liable to forfeiture, should not be released. This, however, does not debar the officers and the authorities under the Act including the Appellate Authority to pass appropriate orders under the circumstances of each case but only after assigning valid reasons. The liberal approach in the matter would perpetuate the commission of more offences with respect to the forest and its produce which, if not protected, is surely to affect the mother-earth and the atmosphere surrounding it. The courts cannot shut their eyes and ignore their obligations indicated in the Act enacted for the purposes of protecting and safeguarding both the forests and their produce. The forests are not only the natural wealth of the country but also protector of human life by providing a

clean and unpolluted atmosphere. We are of the considered view that when any vehicle is seized on the allegation that it was used for committing a forest offence, the same shall not normally be returned to a party till the culmination of all the proceedings in respect of such offence, including confiscatory proceedings, if any. Nonetheless, if for any exceptional reasons a court is inclined to release the vehicle during such pendency, furnishing a bank guarantee should be the minimum condition. No party shall be under the impression that release of vehicle would be possible on easier terms, when such vehicle is alleged to have been involved in commission of a forest offence. Any such easy release would tempt the forest offenders to repeat commission of such offences. Its casualty will be the forests as the same cannot be replenished for years to come."

14. Relying on the aforesaid judgment, it is seen that in the instant case also the vehicle in question was used illegally for transportation of the timber and thus, the order of confiscation was rightly passed by the learned Divisional Forest Officer-cum-Authorized Officer, Sonitpur East Division.

15. He further relies on another decision rendered by the Hon'ble Apex Court passed by the Divisional Bench in Criminal Appeal No.524/2019, wherein, in paragraph No-24 of the said judgment, which read as under:-

"Para-24, In 2017, a similar view has been taken by another two judge Bench of this Court in *Kallo Bai* (supra) while construing the provisions of the Madhya Pradesh Van Upaj (Vyapar Viniyam) Adhiniyam, 1969. By virtue of the amendments made to the Adhiniyam, Sections 15-A to 15-D21 were introduced to provide for confiscation proceedings in line with the provisions contained in the Forest Act as amended in relation to the State of Madhya Pradesh. Relying on the earlier decisions of this Court including *GV Sudhakar Rao* (supra), Justice NV Ramana, speaking for the two judge Bench held:

"23. Criminal prosecution is distinct from confiscation proceedings. The two proceedings are different and parallel, each having a distinct purpose. The object of confiscation proceeding is to enable speedy and effective adjudication with regard to confiscation of the produce and the means used for committing the offence while the object of the prosecution is to punish the offender. The scheme of the Adhiniyam prescribes an independent procedure for confiscation. The intention of prescribing separate proceedings is to provide a deterrent mechanism and to stop further misuse of the vehicle."

16. In addition to his submission, the learned standing counsel also relies on the decision passed by this Court in Criminal Revision Petition 172/2022 (*Deep Kumar vs. State of Assam & Anr.*), wherein the prayer for release of the vehicle was denied by this Court.

17. Mr. Gogoi, learned Standing Counsel, Forest Department has further submitted that the judgment relied by the Hon'ble Apex Court in the Case of *Dhanwat Singh* is not applicable. He further submits that the learned District Judge had dismissed the order of confiscation passed by the learned Divisional

Forest Officer-cum-Authorized Officer without appreciating or without following the provision of law as well as failed to appreciate the fact that confiscation proceeding was initiated and the vehicle in question was used for commission of the forest offence i.e. for transporting the timber.

18. In this regard, Ms. S. K. Nargis, learned counsel for the respondent has submitted that the learned District Judge had rightly passed the order dated 20.09.2022 by setting aside the order of confiscation dated 29.04.2022 with a direction to Divisional Forest Officer-cum-Authorized Officer, Sonitpur East Division to give zimma of the seized vehicle in connection with this case. She also submits that the present respondent is the registered owner of the vehicle and he had confessed that his driver transported the timber illegally without his knowledge and also the forest product was not seized from his possession/ present respondent.

19. She further submitted that the respondent has purchased the vehicle in instalment basis and he is facing financial problem in paying the instalment of the offending vehicle. Further, she submits that from the order of Divisional Forest Officer-cum-Authorized Officer, it is seen that the present respondent had stated before him that he was not aware about illegal transportation of timber in his vehicle and the same statement has been recorded by the Forest Officer. So even if, it is considered that the vehicle was used for carrying the timber illegally it is not within the knowledge of the present respondent/owner of the vehicle.

20. On account of her submission, the learned counsel for the respondent relies on the decision passed by this Court reported in 1999 (1) GLT 633 (Abu Bakkar Ali (MD.) vs. State of Assam & Ors.), wherein, she relies mainly on paragraph Nos.10 and 11 of the said judgment, which read as under:-

10. Section 49(6) enjoins upon the concerned person to satisfy the Authorized Officer that the articles/tools etc. were used without his knowledge of connivance or abetment of the case may be, without the knowledge or connivance or abetment of his/her servant or agent and that all reasonable and due precautions had been taken against the use of the object (s) for the commission of the forest offence; it is a shield to protect an innocent person without whose knowledge or connivance or abetment or those of his/her servant or agent, the offence took place. A duty is cast on such person to establish his/her plea.

11. In *Jibon Bailoung* (Supra), the Court dealing with the nature of proof required to be established by the person referred to in clause (d) of sub-section (5) of Section-49 of the Regulation, 1891 held that the person is required to establish a probable case. The standard of proof required to be given by such person under sub-section (6) of Section 49 of the Regulation, 1891 is not as high as is required for confiscation of an article/property under sub-section (4) of section 49. The Legislature no doubt used the language "proves to the satisfaction of the Authorized Officer"; it cannot, however, be equated with the same standard of proof as is required for confiscation under Section 49 (4) of the Regulation, 1891.

The word "prove" here means no more than to establish/evince/manifest by some facts or circumstances indicating about his or her absence of knowledge, connivance or abetment in the matter and that all reasonable and due precautions had been taken against the use of the object (s) referred to, in the commission of the forest offence. The word "prove" means no more than some materials sufficient to be left to the authorized officer to come to a conclusion/decision. The burden is not as onerous as indicated in sub-section (4) of Section 49 of the Regulation, 1891. The person concerned under sub-section (6) is to establish a reasonable and probable case though it may not be convincing as it required in the case of satisfaction of the Authorized Officer under sub-section (4). It will all depend on the fact situations."

21. The learned counsel for the respondent also submitted that as per Section 49(6) of AFR Act, the vehicle cannot be confiscated by the Forest authority, if it is proved by the person that such vehicle was used to carry the forest product without his knowledge or connivance.

22. She further submits that as per Section 51 of AFR Act, 1891, it has been held that;

(1) When any person is convicted of a forest offence, all forest produce which is not the property of the [Government]¹ and in respect of which such offence has been committed, and all tools, boats carts and cattle used in the commission of such offence, shall be liable, by order of the convicting Court, to Review Appeal Procedure on receipt by Magistrate of report of seizure. Forest produce, tools etc when liable to confiscation. confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence.

23. But, here in the instant case, the respondent took plea before the forest authority that being the registered owner of the vehicle it was not within his knowledge about carrying the forest product without any valid document. The order of confiscation passed by the forest officer also reflects that the owner has stated before him that it was not within his knowledge in regards to carrying the forest timber/firewood in his vehicle. She further submits that forest product was exclusively seized from the possession of the driver when vehicle was engaged in carrying the forest product illegally. However, while passing the order of confiscation the forest authority did not considered this aspect of this case and arbitrarily passed the order of confiscation and for which the respondent had to approach the learned District Judge to set aside the confiscation order. Further, the said Court, considering the prayer of the respondent had set aside the order of confiscation and directed the forest authority to give zimma of the said offending vehicle to the present respondent. Accordingly, it is submitted by the learned counsel for the respondent that the learned District Judge has not committed any error or mistake while the passing the order dated 20.09.2022 in Misc. Appeal No.01(S-2)/2022.

24. After considering the submission made by the learned counsels of both sides, I have perused the case record and the order passed by the learned District Judge dated 20.09.2022. From the order of confiscation passed by the Divisional Forest Officer-cum-Authorized Officer, it is seen that the driver could not produce any valid document of the forest product, though the driver claimed that he collected the timber from PP land of one Biju Devi. But, in the same time, it is seen from the order of the forest officer that the driver confessed before him that he carried those products illegally and it is also seen that the registered owner of the vehicle i.e. the present respondent had no knowledge about the same.

25. Section 49 (6) of AFR Act, 1891 speak as under:-

(6) Notwithstanding anything contained in the foregoing provisions, no order of confiscation under subsection (4) of any tools, boats, motorized boats, vessels, cattle, carts, rafts, machineries, vehicles, trucks, ropes, chains or any other implements, articles (other than timber or forest produce) shall be made if any persons referred to in clause (b) of sub-section (5) proves to the satisfaction of the Authorized Officer that such tools, vehicles machineries, trucks, vessels, boats, motorized boats, vessels, carts, rafts, cattle, ropes, chains or any other implements, articles were used without his knowledge or connivance or abetment or as the case may be- without the knowledge or connivance or abetment of his servant or agent and that all reasonable and due precautions had been taken against the use of the object aforesaid for the commission of the forest offence."

26. Here in the instant case, it is seen that the forest authority had seized the vehicle, which was carrying forest product/timber illegally without proper documents and those were seized from the possession of the driver of the offending vehicle. But, the owner of the vehicle took the same plea before the forest authority that he is responsible for the act committed by the driver, but, he was not aware about fact that the his vehicle was used for transporting timber illegally. More so from the order of confiscation, it is also seen that the driver confessed that he was carrying the forest product illegally and there is no statement made by him that it was under the connivance of the owner/respondent.

27. It is fact that under Section 49 of AFR Act, 1891 forest authority has the power to seized and confiscate the forest product after complying with the provision given under Section 49(5) of AFR Act, 1891. However, the process of confiscation also can be denied by the forest authority, if it is satisfied by the owner of the vehicle that the forest product was carried without his connivance and, in that case, it is not proper to pass confiscation order. But, here in the case, it is seen that even the driver of the vehicle confessed before the forest authority that he used the offending vehicle for carrying illegal forest product without the knowledge of the owner/respondent and also he did not make any allegation against the owner/respondent.

28. The Hon'ble Supreme Court in the case of State of West Bengal And Ors. vs

Sujit Kumar Rana reported in (2004) 4 SCC 129, has been held that:-

"An order of confiscation of forest produce in a proceeding under Section 59-A of the Act would not amount either to penalty or punishment. Such an order, however, can be passed only in the event a valid seizure is made and the authorized officer satisfies himself as regards ownership of the forest produce in the State as also commission of a forest offence. An order of confiscation is not to be passed automatically, and in terms of sub-section (3) of Section 59-A a discretionary power has been conferred upon the authorized officer in relation to a vehicle. Apart from the ingredients which are required to be proved in terms of sub-section (3) of Section 59-A by reason of the proviso appended to Section 59-B, a notice is also required to be issued to the owner of the vehicle and furthermore in terms of sub-section (2) thereof an opportunity has to be granted to the owner of the vehicle so as to enable him to show that the same has been used in carrying forest produce without his knowledge or connivance and by necessary implication precautions therefor have been taken."

29. From the entire discussion made above, it is seen that during the entire confiscation proceeding, the respondent took the plea that his driver had carried the forest product in his vehicle and even the driver had confessed the same. There is no material to show that the owner/respondent had any knowledge about illegal transportation of timber and further there is no evidence that the driver of the vehicle carried the forest product in the vehicle in connivance of the owner/respondent. Thus, the learned District Judge has not committed any error or mistake by setting aside the order of confiscation passed by the Divisional Forest Officer-cum-Authorized Officer by directing the concerned authority to giving the zimma of the said vehicle to the present respondent.

30. So, from the discussions made above and also considering the entire facts and circumstances of the case, I am of the opinion that the learned District Judge, Biswanath has committed no illegality while setting aside the order of confiscation dated 29.04.2022 passed by the Divisional Forest Officer, Sonitpur in OR No. D/04 dated 02.12.2021 by allowing the zimma of the offending vehicle to the respondent/opposite party and hence, I find that the impugned Judgment and Order 20.09.2022, passed by the learned District Judge, Biswanath in Misc. Appeal No. 01(S-2)/2022, requires no interference of this Court and accordingly, the same stands affirmed.

31. Resultantly, the criminal petition stands dismissed.

32. Send back the LCR along with a copy of this Judgment and Order.