(2001) 05 JH CK 0033

In the Jharkhand High Court

Case No : Govt. Appeal No. 2 of 1994 with Cr. Appeal No. 130 of 2001

State of Bihar and Bihar Timber and Others APPELLANT

Vs

Md. Yunus and Others and State RESPONDENT

Date of Decision : 05-05-2001

Acts Referred:

Bihar Forest Produce (Regulation of Trade) Act, 1984 — Section 1(C), 20
Criminal Procedure Code, 1973 (CrPC) — Section 378(1), 378(5), 454
Forest Act, 1927 — Section 41, 42, 69

Citation : (2001) 05 JH CK 0033

Hon'ble Judges : D.N. Prasad, J

Bench : Single Bench

Advocate : S.N. Rajgharia, Kameshwar Prasad, Sunil Kumar Sinha, Rajesh Kumar and A. Sarkar, for the Appellant;

Final Decision : Allowed

Judgement

D.N. Prasad, J.—Both appeals have been heard together as they are arisen out of the same Judgment and are being disposed of by this common Judgment.

2. The Govt. Appeal u/s 378(1) and (5) of the Code of Criminal Procedure has been filed by the State against the judgment of acquittal dated 20.7.1993 passed by the Judicial Magistrate. 1st Class, 1st Class, Khunti in Case No. 6 II C/88, whereby and whereunder the accused/respondents were acquitted for the offences under Sections 41 and 42 of the Indian Forest Act and Section 20 of the Bihar Forest Produce (Regulation of Trade) Act. 1984.

3. Another appeal has been filed u/s 454 of the Code of Criminal Procedure against the order passed by the learned Magistrate that the timber seized from the appellant''s Saw Mill and Godown is Government property and also directed the appellant No. 2 (Md. Yunus) to deposit a bank security bond of Rs. 75.000/- within one month.

Actually Cr. Appeal No. 130/2001 was preferred before the Judicial

Commissioner. Ranch) being as Cr. Appeal No. 81 of 1993. In pursuance of Order dated 22.7.1976, the said Cr. Appeal No. 81/93 was ordered to be transferred to this Court to be placed alongwith Government Appeal No.2/1994 for disposal on the ground that both the appeals have arisen from the same judgment. Later on the said Cr. Appeal No. 81 of 1993 was numbered as Cr. Appeal No. 130/2001 in this Court.

4. The case of the prosecution in brief as stated ACF Khunti range received a confidential report on 6.7.1988 that saw mill is running in the name of Bihar Timber without licence and the forest produce have been kept there illegally. On the basis of which he inspected the premises of said Mill on the same day and found there woods which do not bear the Govt. Hammer Mark and thereafter a notice was served upon to Md. Islam, the father of the proprietor for producing docu- ment in respect of said forest produce in the office. But, the proprietor neither produced any licence for the Mill nor any documents in respect of the said forest produce rather they made an application and prayed for time to produce the documents. On 10.7.1988, the clerk of the Mill produced for transportation permit bearing Nos. 5605, 3383, 3384 and 3385 but he did not produce any licence issued from the Forest Department for the said Mill. On 11.7.1998 the said Mill was found to be closed. On the next day again the Informant inspected the Mill and he seized wood of which there was no any passing hammer mark i.e. 936 pieces of Sal Balli 63 pieces of Sal Bota, 243 pieces of Sal Chiron, 550 pieces of Auxikhet Bota and 83 pieces of Gamhar Bota. The said wood was brought to Khunti Forest Office. Accordingly, seizure list was prepared and the FIR was lodged.

5. After due investigation and obtaining sanction for the prosecution, the prosecution report was submitted for the offences under Sections 41, 42 and 69 of the Indian Forest Act and 20 of the Bihar Forest Produce (Regulation of Trade) Act, 1984. The witnesses were examined and the documents were also exhibited. Having heard both parties and considering the evidences on record, the court below acquitted the respondents but the seized woods were not released in favour of the appellants on the ground that the seized property are the Government property.

6. On being aggrieved and dissatisfied with the judgment impugned, the State preferred this appeal claiming therein the learned Magistrate committed error in acquitting the appellants and has not considered the Forest Produce Transit Rules. 1973. according to which forest produce without valid transit permit would be deemed that the appellants had brought the said woods from the forest and there is no valid paper for the same. Therefore, the appellants should have been convicted. It is also mentioned that the finding of the learned Magistrate is quite contradictory as at one place the court below acquitted the appellants finding the prosecution failed to establish the charges and at the same time it was found that the said wood is a Government property. It is also settled that the wood taken from the Forest Department must bear the hammer mark, which was not

found and as such the court below committed error in acquitting the respondents.

Another Criminal Appeal No. 130/2001 was preferred by M/s. Bihar Timber and other for release of the woods. In the said appeal, it is alleged that the learned Magistrate failed to appreciate the receipts so granted (Ext. 1 series), and also transit permits produced in the court (Ext. 4 series) and these documents will clarify itself that the proprietor had purchased the timber from Raiyati plots of one Theofil Kandulna and others and from the State Trading Corporation of the Forest, Khunti, Informant, also admitted in his evidence that the said transactions made in favour of the both parties are true. The permits (Ext. 4 and 4/3) are in respect of the timber sold to the appellants/proprietor by Gutwa State Trading Corporation of the Forest Department. All the documents are genuine as well as the forest official was not authorised to inspect the Saw Mill of the appellant/proprietor at the relevant time as Bihar Forest Produce (Regulation of Trade) Act was not applicable in absence of Notification issued by the State Government as per judgment of Division Bench reported in 1989 BLJR 109. Though, the State Government enacted another Regulation in the year 1990. Moreover, the appellant/proprietor had purchased the said timber with valid papers and all the documents including transit permits have been filed which have been discussed in detail, as a result of which the learned Magistrate acquitted the appellants after considering the evidences on record properly. Therefore, the order passed by the learned Court below rejecting the release of woods is fit to be set aside.

7. Mr. S.N. Rajgharia. the learned APP appearing on behalf of the State submitted that the Court below committed error in acquitting the respondents, as there was no hammer mark on the timber seized from the Saw Mill whereas the Hammer mark is a condition precedent in the timber brought from the Forest Department. It is further submitted that in exercise of powers conferred by Sections 41, 42 and 69 of the Indian Forest Act, 1927. the Bihar Government already enacted the Bihar Saw Mills (Regulation) Act, 1990 and there was no illegality on the part of the Informant who made inspection of a Saw Mill.

8. Mr. Kameshwar Prasad. Senior Advocate, appearing on behalf of the respondents contended before me that the learned Magistrate acquitted the respondents believing all the documents produced from the side of the respondents to be true and genuine, but at the same time, the timber which was purchased by the respondents with genuine and valid documents have not been released. It is also submitted that there is no illegality in acquitting the respondents as Bihar Forest Produce (Regulation of Trade) Act. 1984 was already declared non applicable by the judgment of Division Bench report in 1989 BLJR 109, though the State Government enacted another Regulation in 1990, whereas the timber was seized in the year 1988 when virtually there was no Regulation in existence and as such the forest official was not empowered to enter Into the Saw Mill or inspect the Saw Pit. It is further argued that Bihar Kastha Tatha Anya Van Utpadan (Abhiwahan Viniyaman) Niyamabali, 1973 was actually in existence

but admittedly the said timber has never been seized or detected in transit as the said Regulation was enacted in respect of the words seized in taking away in transit and, therefore, that Regulation will not be applicable in the instant case. It is further argued that the court below relied upon all the documents produced by the respondents and after detailed discussion and consideration of the said documents coupled with the evidence acquitted the respondents which does not require to be interferred.

9. Altogether, five witnesses have been examined on behalf of the prosecution in support of the prosecution case.

PW 1 is the Forest Gaurd claiming to be present at the time of raid in the Bihar Timber. According to him, no seizure was made in respect of the wood on 6.7.1988 on which date he accompanied with the Informant for the raid.He further deposed that Munshi was present at the timber depot on 6.7.1988. PW 2 is the Court Forester, who claimed to had prepared inventory of the said Umber. PW 3 is the Informant. According to him, he got a confidential Information on the basis of which he alongwith others raided the depot of Bihar Timber and he seized wood lying at the depot as no any document was produced. But, at the same time, he admitted that. Afunshi had produced four transit permit on 10.7.1988 but there was no licence of saw Mill. He proved the said transit permit (Ext. 4 series). He clearly admitted in para 26 of his deposl- Uon that he had also inquired about registration of saw Mill and he found that an application was already filed for registration of Bihar Timber and that was filed earlier to the institution of the case. He further stated that licence fee was also deposited by the accused persons for registration at the office of Ranchi. According to him, woods are being sold from Gutuwa Forest Depot. He also admitted that he came to know that lot No. 6188 was released in favour of Bihar Timber from Gutuwa depot. He also proved the release order (Ext. C series) and he further proved the receipt issued form Forest Department in connection with sale of the woods. He farther proved the Registration certificate in connection with Central Sales Tax by Bihar Sales department. Ext. E and E/1. He further admitted in clear terms that he had also inquired about cutting of the said wood from the forest area and on enquiry, it was found that the said woods was not cut from the forest area, nor any report was made by the forest officials. He further proved the permit of the woods dated 9.7.1988 which was issued from Chatra Forest Depot in favour of Bihar Timber, Ext. G series.He also admitted in para 49 of his deposition that one sale paper was produced before him at the time of raid and the said sale paper was marked as Ext. 1. He could not find truck No. BRV-7911 on 12.7.1988 and he had also found several woods in pieces.

10. PW 4 stated that the seizure list was prepared in his presence and Munshi had produced four permits at the relevant time. He also claimed that the Timber found at the Bihar Timber depot was also compared with the said four permits.PW 5 is a formal witness.

11. From going through the evidence on record, it is clear that four transit

permits, admittedly, were produced before the Informant at the time of raid. Certificate of registration in respect of M/s. Bihar Timber, Ext. E series, have also been produced. The Licence, Ext. E is standing in the name of the Bihar Timber. Receipts have also been filed which are marked Ext. G series and those receipts are standing in the name of Bihar Timber.

From going through the said receipts, it appears that the timber was moved from one place to another and for which checking was also made at different check post of which there is endorsement made.Another paper is the sale paper, Ext. 1, from which it appears that the Raiyats had also sold the timber in favour of the accused persons as back as on 5.1.1988 and there is no denial from the side of the prosecution in this respect. The transit permit, Ext. 4 series also establishes that it was issued from Gutuwa Depot Forest Ranchi being the genuine paper standing in the name of Bihar Timber.

12. The offence u/s 41 of the Indian Forest Act indicates in committing the offence only during the course of transit period and not beyond that. The Rules of Establishment of Saw Pit and Regulation of Depot, 1983 were enacted but the said Act was struck down as per the decision reported in Ranchi Timber Traders Association and Others etc. Vs. State of Bihar and Others, . Admittedly, the umber alleged to have been seized, were seized from the depot and not during the transit period. Bihar Kastha Tatha Anya Van Ut-padan (Abhiwahan Viniyaman) Niyamabali, 1973 remained in force which dealt with to check theft of forest produce during transit period when the forest timbers were taken by road, but in the case at hand, the timber said to have been seized from the depot and not from the road or at the time of transit.

13. Since, no notifications u/s l(c) of Bihar Forest Produce (Regulation of Trade) Act, 1984 have been published applying the Act to any area of Bihar and as such it was held by the Division Bench in the case of Kartik Gowala v. State 1989 BLJR 109. that the Forest Department cannot claim that there was bar or restriction on purchase, transport, import or export of specified forest produce in Bihar. Thus, the respondent (State) was restrained from interfering with the trade in forest produce till notification u/s 1 (c) of the Act is issued. Judgment against acquittal should not be interfered if the decision is based on proper appreciation and consideration of evidence.

14. The learned Court below discussed the evidence on record in detail and has rightly held that in absence of Notification u/s 1(c) of the Act. the Forest Department was not authorised to enter into the premises and seize the articles at the time in question arid in the manner as alleged. Moreover, another rule was replaced by the State Government in the year 1990 which is after the registration of the instant case. It is also clear from the judgment of lower Court that the decision is substantiated and based on proper appreciation of evidence as well as reasons have been assigned by the trial Court for acquittal and the judgment does not appear to be perverse.

15. It is also settled that this Court should not set aside the acquittal because a different view of the evidence can be taken. Since, the court below considered the evidence on record after proper appreciation and acquitted the respondent, this appeal against acquittal does not require to be interfered. In this view of the matter, I do not find any merit in the Government Appeal which is fit to be dismissed.

16. As regards Criminal Appeal No. 130/2001 which was preferred by M/s. Bihar Timber and others u/s 454 of the Code of Criminal Procedure for release of the woods/timber, it is stated that the said timber have validly been purchased and for which the transit permits as well as receipts issued from Forest department itself have duly been brought on the record.

17. Apparently, the trial Court acquitted the appellants but the timbers said to have been seized from the premises of M/s. Bihar Timber were not released on the ground that the said timbers are the Government properties.

18. In this regard, it would be appropriate to deal with the evidence of Informant, who is the Assistant Conservator of Forest and he virtually admitted about the genuinity and validity of the said timbers said to be purchased from Chatra Forest Range and also from Gutuwa Forest Depot. PW 4 (Informant) admitted to had received four transit permits which was produced by the Munshi of Bihar Timber before the registration of the case i.e. on 10.7.1988 (Annexure 4 series), which were apparently granted by Gutuwa Depot in the name of Bihar Timber. On the back of the said transit permit there is an endorsement of being checked from check post. He further admitted about the issuance of permit dated 9.7.1988 from Chatra Forest Depot in the name of Bihar Timber, Ext. G Series. He also admitted in para 29 that lot No. 6188 was released from Gutuwa Depot in the name of Bihar Timber by the valid order. According to him, if any Raiyat wants to sell the tree/tibmer then he can obtainable the permit from Forest Department which is also evident from Ext. C series standing in the name of different raiyats and the said permit was granted by the Forest Department itself for selling the woods. According to him an enquiry was also made to verify about cutting or committing of theft of woods from the forest area and it was found that there was no such report nor the said timber said to be seized were found cutting from any range of the forest area which clearly proves that there was no reporting about theft of timber from the forest area and the documents produced from the side of the appellant, Bihar Timber are genuine and valid. The Informant also admitted that he found some of timber in pieces and admittedly the said timber being in pieces would not bear any Hammer mark. Ext. F is the licence standing in the name of Bihar Timber granted by the Factory Inspection Department (Govt. of Bihar).

19. Thus, from the documents a well as the evidences collected on the record, it is evident that there is nothing to establish that the said timber or woods were theft property, rather those articles are armed with valid papers. Till, 1990. the Forest Authorities had no right to enter into any Saw Mills, rather they had only

right to seize the forest produce during the period of transit.

Section 69 of the Indian Forest Act reads as under :

"Presumption that forest-produce belongs to Government--When in any proceedings taken under this Act, or inconsequence of anything done under this Act, a question arises as to whether any forest-produce is the property of the Government, such produce shall be presumed to be the property of the Government until the contrary is proved."

The above provision clearly denotes that such forest produce shall be presumed to be the property of Government until the contrary is proved. The case at hand, as it has already been discussed above, several documents including the transit permits as well as cash memo and permits duly issued from the Forest Department itself indicates that the appellants are having valid documents for the said timber/wood, as a result of which the said timbers/woods cannot be said to be the property of Government.

20. Having regard to the above facts and circumstances coupled with the evidences" on record, it is established that the prosecution has totally failed to establish the charges against the appellant beyond all reasonable doubts and for which the appellants have rightly been acquitted, which does not require to be interfered. Thus, the Govt. Appeal No. 2/1994 is dismissed.

Considering the above facts and circumstances, the Cr. Appeal No. 130 of 2001 is, hereby, allowed. Accordingly, the order passed by the Court below is. hereby, set aside. Let the cash security and the bank security bond, if deposited, be released in favour of the appellants.

21. G.A. No. 2 dismissed but Crl A. 130/2001 allowed.