

(2013) 10 CHH CK 0024
In the Chhattisgarh High Court
Case No : W.P. No. 2948 of 2005

State of Chhattisgarh and Another	Vs	APPELLANT
Shankar Lal Dewangan and Another		RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Citation : (2014) 1 MPJR 13

Hon'ble Judges : Pritinker Diwaker, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pritinker Diwaker, J.—Challenge in the present petition filed under Article 227 of the Constitution of India is to the order dated 25.5.2005 (Annexure P/1) passed by 1st Additional Sessions Judge, Ranker, in Criminal Revision No. 6/05, whereby the learned Court below has allowed the revision preferred by respondent No. 1 assailing the order dated 26.10.2004 passed by the Conservator of Forest u/s 52-B of the Indian Forest Act, 1927 (in short "the Act, 1927"). Facts of the case, in brief, are that in the intervening night of 24/25* October, 2003, vehicle Max Marshal bearing registration No. CG-04-B/0812 owned by respondent No. 1 was stopped by the forest officials near Forest Check Post--Pondgaon and upon checking, 34 pieces of teak wood, total 1.129 cubic meter, were found in the said vehicle. It is further case of the forest department that at the relevant time, the vehicle in question was being driven by one Ghanshyam Dewangan, elder brother of respondent No. 1, who upon query could not show any documents in respect of possession of the said wood. Therefore, Forest Offence No. 3766/13 was registered on 25.10.2003 and after completing all the formalities, Sub Divisional Officer (Forest), Antagarh passed an order of confiscation of the said vehicle on 19.7.2004 (Annexure P/2). The said order was assailed by respondent No. 1 before Forest Conservator in appeal. However, his appeal was also dismissed vide order dated 26.10.2004 (Annexure P/3). Order dated 26.10.2004 of Forest Conservator was subjected to revision by respondent No. 1 before the 1st

Additional Sessions Judge, Kanker and vide impugned order dated 25.5.2005 (Annexure P/1), the Court below allowed the revision setting aside order dated 26.10.2004 passed by Forest Conservator. Hence this petition.

2. Learned counsel for the petitioners/State submits that the revisional Court has erred in law while reversing the well reasoned orders passed by the forest authorities. He submits that as per provisions of sub-section (5) of Section 52 of the Act, 1927, burden lies on the owner of the vehicle to prove that he had no knowledge of the vehicle being used in commission of forest offence, there was no connivance between the owner and the driver/servant/agent and that the owner had taken reasonable and necessary precautions against use of the vehicles for commission of any forest offence. He further submits that in the present case, respondent No. 1/owner has not stated in his evidence that he had taken reasonable and necessary precautions while handing over his vehicle to his brother. He submits that even otherwise, as per Section 52(5) of the Act, 1927, the owner is not only required to make such statement that he had taken due care and precautions to prevent any misuse, but is also required to prove the same by leading sufficient evidence to the satisfaction of the authorized officer. However, in his cross-examination, respondent No. 1 has categorically stated that he had not given any authority to his brother Ghanshyam/driver of the vehicle for taking the vehicle anywhere and he (driver) used to follow his instructions only.

In support of his contention, learned counsel for the petitioners/State has placed reliance on the decision of the Apex Court in the matters of State of West Bengal and Another Vs. Mahua Sarkar, ; AIR 2000 3495 (SC); B.K. Muniraju Vs. State of Karnataka and Others, ; Krishi Utpadan Mandi Samiti and Another Vs. Ved Ram, ; and the order dated 28.6.2012 passed by this Court in W.P. No. 4298/97 in the case of State of Madhya Pradesh (now Chhattisgarh) v. Krishna Kanivapaddy and another.

3. Replying to the arguments of the State counsel, it has been argued by learned counsel for respondent No. 1 that respondent No. 1 had taken all necessary precautions while handling over the vehicle to his brother Ghanshyam i.e. driver of the vehicle. When the vehicle was not returned to respondent No. 1, it was searched in the nearby places and respondent No. 1 was under the impression that on account of festival of Diwali, his brother/driver might have taken the vehicle to the house of any of his relatives. He has further argued that the vehicle was given to the driver for dropping certain passengers to Raipur and if on the way the driver has done anything wrong, respondent No. 1 can not be blamed for it.

To buttress his contention, learned counsel for respondent No. 1 has placed reliance on the decision of the Apex Court rendered in the matter of Assistant Forest Conservator and Others Vs. Sharad Ramchandra Kale, .

4. I have heard learned counsel for the parties and perused the material on

record.

5. There may be some limit for the High Court to exercise its power under Article 227 of the Constitution of India, however, it is also a settled proposition of law that the High Court has every power to correct the jurisdictional error and to further upset the finding recorded by the authorities below or the tribunals which, on the face of record, are perverse. Writ of certiorari can also be issued if the authority concerned has refused to exercise the jurisdiction vested in it or acted illegally or improperly while exercising its jurisdiction, thereby causing grave injustice or miscarriage of justice. It would be well within the jurisdiction of the High Court to correct such an error and can issue a writ of certiorari when the finding recorded by the authority below is contrary to law, facts and based on evidence which is legally inadmissible under the law.

It is further settled legal position that the revisional authority while exercising the power u/s 52B of the Act, 1927 can not ordinarily set aside the finding of fact recorded by the Courts below i.e. the forest authorities unless such finding is absolutely perverse and has been recorded by complete misreading of statements of witnesses or ignoring the settled proposition of law.

6. Sub-section (5) of Section 52 of the Act, 1927 reads as under:

52. Seizure of property liable to confiscation and procedure therefore-

(1) xxxx

(2) xxxx

....

(5) No order of confiscation under sub-section (3) of any tools,

vehicles, boats, ropes, chains or any other article (other than timber or forest-produce seized) shall be made if any person referred to in clause (b) of sub-section (4) proves to the satisfaction of authorized officer that any such tools, vehicles, boats, ropes, chains or other articles were used without his knowledge or connivance or, as the case may be, without the knowledge or connivance of his servant or agent and that all reasonable and necessary precautions had been taken against use of objects aforesaid for commission of forest-offence.

A bare reading of the above section makes it clear that burden is upon the owner of the vehicle to prove his innocence to the satisfaction of the authorized officer by sufficient material that the vehicle has been used without his knowledge or connivance. It is further upon the owner to prove that while handing over the vehicle to his driver/servant/agent, he had taken all reasonable and necessary precautions. In the case in hand, respondent No. 1/owner in his statement has even not bothered to state that he had taken due precautions as required u/s 52(5) of the Act, 1927. A bare reading of his statement makes it evident that for about four days, he had not made serious efforts to trace his vehicle and was simply under the impression that his vehicle would be returned after some time.

Likewise, from the statement of driver of the vehicle--Ghansyham, it appears that while loading teak wood, he had not taken proper precautions with respect to authenticity of the documents for carrying/transporting the said forest produce. While passing the impugned order, the revisional Court has presumed number of things of its own, which unfortunately is not permissible under the law.

7. In the case of Mahua Sarkar (supra), it has been held by the Apex Court in paras 10 & 11 as under:

10. The language used is very clear. It is the owner who has to prove that the vehicle was used in carrying timber or other forest produce without his knowledge or connivance or that of his agent.

11. The requirement is mandatory that the owner has to prove that he had no knowledge or had not connived. It is a matter which is within his knowledge. Mere assertion without anything else will not suffice. There is another requirement that either he or his agent, if any, or the person in charge thereof had taken all reasonable and necessary precaution against such use. This aspect has to be established by the person concerned by sufficient material. As noted above, mere assertion in that regard could not be sufficient.

8. While passing the orders, S.D.O. (F) and Forest Conservator have considered all the aspects of the case. Having gone through these orders and the material available on record, this Court is of the considered opinion that there was no occasion for the revisional Court to upset the well reasoned orders of the forest authorities, which were passed after due appreciation of evidence led by the parties. The judgment in Sharad Ramchandra kale (supra) cited on behalf of respondent No. 1 is of no help to him because facts of the present case are entirely different from those of the cited case.

9. In view of the above, the finding recorded by the prescribed authority and the appellate authority, this Court is of the considered opinion that the revisional Court has exceeded its jurisdiction while passing the order impugned and therefore, the same is liable to be set aside in exercise of powers under Article 227 of the Constitution of India. In the result, the petition is allowed and the order impugned (Annexure P/1) is set aside.