
(1990) 04 GUJ CK 0001
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Luhana Prabhudas Vrajlal

RESPONDENT

Date of Decision : 10-04-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Forest Act, 1927 — Section 52

Citation : (1990) 2 GLR 1300

Hon'ble Judges : T.U. Mehta, J

Bench : Single Bench

Judgement

J.U. Mehta, J.—The State has approached this Court under Articles 226 and 227 of the Constitution of India for quashing and setting aside the judgment and order passed by the learned Addl. Sessions Judge, Junagadh in Criminal Appeal No. 40 of 1985 dated 2-5-1987.

2. Brief facts of the prosecution case are:

3. That on 12-9-1984, the respondent, who is owner of the Matador passed through Bilkha-Visavadar Road. At that time, near Navi Chavand Patia, the Range Forest Officer, Visavadar Range, raided the vehicle with the help of Police party. On search, he found illegal cut Sagi wood. There were in all 40 Sagi wood in the Matador. According to the complaint lodged the said wood was forest produce and therefore, u/s 61A of the Indian Forest Act (hereinafter referred to as "the Act") the offence was registered and inquiry was held and ultimately on 28-11-1985, the Deputy Conservator of Forest, Gir (West), Junagadh confiscated the wood as well as the vehicle used in illegal transportation of the said Sagi wood.

4. Against the said order of confiscation, the accused preferred an appeal u/s 61D of the Act in the Court of the learned Additional Sessions Judge, Junagadh and the learned Additional Sessions Judge by his judgment and order dated 20th May, 1987 allowed the said appeal and set aside the said order of confiscation passed by the Deputy Conservator of Forest, Gir (West) dated 28-11-1985. The

learned Addl. Sessions Judge also ordered to return the amount of Rs. 1000/- to the accused-appellant which was recovered as advance recovery by the Deputy Conservator of Forests, Junagadh.

5. Being aggrieved and dissatisfied by the learned Addl. Sessions Judge, Junagadh, the State has preferred this petition before this Court under Articles 226 and 227 of the Constitution of India.

6. The learned Addl. P.P., appearing on behalf of the petitioner urged before this Court that the learned Addl. Sessions Judge while deciding the appeal has not kept in mind the provisions of Section 61D of the Forests Act, and therefore, he has wrongly come to the decision of quashing and setting aside the order of confiscation. The learned Addl. P.P., submits that by virtue of Sub-section (2) of Section 61B the owner must satisfy the authorised officer that the vehicle was used in carrying the forest produce, without knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the vehicle had taken all reasonable and necessary precautions against such use. There is not evidence on record that the owner of the vehicle had taken care and necessary precautions and that it was used in carrying forest produce without knowledge connivance of the owner of the vehicle. Under these circumstances, the learned Addl. Sessions Judge committed an error in coming to the conclusion that the order of the Deputy Conservator of Forest was bad.

7. The learned Advocate appearing on behalf of the respondents submits that this Court has limited jurisdiction under Article 227 of the Constitution of India and this Court cannot interfere usually to correct the error of law in the decision and will not review or re-weigh the evidence upon which the determination was arrived at by the superior Court.

8. Now Sub-sections (1) and (2) of Section 61A of the Forests Act reads as under:

Notwithstanding anything contained in the foregoing provisions of the 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 any forest produce which is the property of the State Government the officer seizing the property under Sub-section (1) of Section 52 shall without any unreasonable delay produce it, together with all tools, ropes, chains, boats, vehicle and cattle used in committing such offence, before an Official Gazette not being below the rank of an Assistant Conservator of Forest (hereinafter referred to as "the authorised Officer").

(2) Where the authorised Officer seizes under Sub-section (1) of Section 52 any forest produce which is the property of the State Government or where any such property is produced before the 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.

Section 61B reads as under:

61B (1) No order confiscating any forest produce or tools, ropes, chains, boats, vehicles or cattle shall be made u/s 61A except after notice in writing to the person from whom it is seized informing him of the grounds on which it is proposed to confiscate it 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 61A 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 forest produce 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 precaution against such use.

Section 61D reads as under:

61D (1) Any person aggrieved by any order passed u/s 61A or Section 61C may, within thirty days from the date of communication to him of such order, appeal to the Sessions Judge having jurisdiction over the area in which the property to which the order relates has been seized and the Sessions Judge shall, after giving an opportunity of being heard to the appellant and the authorised Officer specially empowered u/s 61C as the case may be, pass such order as he may think fit confirming modifying or annulling the order appealed against.

(2) An order of the Sessions Judge under Sub-section (1) shall be final and shall not be questioned in any Court of law.

9. The learned Addl. P.P., appearing on behalf of the petitioner took me through the judgment of the learned Additional Sessions Judge and pointed out that in arriving at the conclusion of quashing and setting aside the order of confiscation the learned Addl. Sessions Judge has not addressed himself with regard to the provisions of Section 61B (2). Sub-section (2) of Section 61B says that if the owner of the vehicle proves to the satisfaction of the authorised Officer that it was used in carrying forest produce, without knowledge or connivance of the owner himself, no order confiscating any vehicle shall be made u/s 61A.

10. In my opinion the learned Addl. Sessions Judge failed to look to the relevant provisions of Section 61B of the Indian Forest Act, while deciding the appeal. Though under Article 227 of the Constitution of India, scope for interference by the High Court is limited but in this case there is non-application of mind by the learned Addl. Sessions Judge to the relevant provisions of the Act as aforesaid and it would amount to error apparent on the face of the record. Therefore, this High Court is entitled to interfere under Article 227 of the Constitution of India.

10.1. Under the circumstances, I quash and set aside the order passed by the learned Additional Sessions Judge and remand the matter to the learned Addl. Sessions Judge, Junagadh to hear the aforesaid Criminal Appeal afresh and to decide the same in accordance with law in the light and observations made hereinabove and the evidence produced on record in this behalf.

11. The matter is old one of 1985, and therefore, it is hoped that the learned Additional Sessions Judge will give top priority in disposing this matter within one month from the date of the receipt of the writ of this Court. Rule made absolute.