

(2001) 02 GUJ CK 0046

In the Gujarat High Court

Case No : Special Criminal Application No. 1395 of 1989

State of Gujarat

APPELLANT

Vs

Rathod Manpritsinh Mahendrasinh

RESPONDENT

Date of Decision : 17-02-2001

Acts Referred:

Bombay Forest Rules, 1942 — Rule 66
Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 320(8)
Forest Act, 1927 — Section 41, 52, 61(A), 61(B), 61(B)(2)
Limitation Act, 1963 — Section 5
Minimum Wages Act, 1948 — Section 20

Citation : (2001) CriLJ 4052

Hon'ble Judges : H.H. Mehta, J

Bench : Single Bench

Advocate : B.Y. Mankad, app, for the Appellant; Akshay H. Mehta, for the Respondent

Final Decision : Dismissed

Judgement

H.H. Mehta, J.—The State of Gujarat has by filing this writ petition under Article 227 of the Constitution of India challenged the legality and validity of a judgement Exh. 12 dated 25.9.89 rendered by the Learned Sessions Judge, Panch Mahals, Godhra (hereinafter referred to as "the learned Appellate Judge") in Criminal Appeal NO. 10 of 1989.

2. The brief facts leading to the present petition in a nutshell are as follows:-

On or about 15.5.1988 at about 2:13 a.m. in the midnight, the Round Forester, Singapur, Taluka Limkheda apprehended the vehicle in question i.e. Tempo No. GRV-7003 (hereinafter referred to as the "offending vehicle") loaded with reserved teak wood and injalli wood. On asking the driver of the offending vehicle as to whether he was possessing a transit pass or permit to remove the aforesaid wood, it was found that the driver had no such pass or permit and

hence the felling of the trees was suspicious and hence the wood as well as the offending vehicle were seized u/s 52 of the Indian Forests Act, 1927 (for short "the Act"). The driver and the cleaner of the vehicle fled away leaving the offending vehicle behind. Thereafter, a forest offence was registered as Singapur Crime Register No. 28 of 1988-89 and the Range Forest Officer, Limkheda reported the matter to the Deputy Conservator of Forests, Baria Division, Baria on 16.5.1988.

2.1. Thereafter, the Deputy Conservator of Forests, Baria passed an order dated 17.10.1988 u/s 61(A) of the Act and confiscated the wood which was being carried in the said tempo as well as the offending tempo. In that case, with regard to confiscation of offending tempo, the present respondent, who is admittedly the owner of the vehicle, was an affected person. Against the order being passed by the Deputy Conservator of Forests, Baria, present opponent (owner of offending Tempo) had filed an appeal u/s 61(D) of the Act in the Sessions Court, Panch Mahals at Godhra. That appeal came to be registered as Criminal Appeal No. 10 of 1989. After hearing the arguments of the learned advocates for both the parties and after appreciating the evidence on record available to the Learned Appellate Judge, the Learned Appellate Judge by rendering his judgement dated 25.9.89, partly allowed that appeal preferred by the present respondent. As per the operative portion of the order, the Learned Appellate Judge set aside the order of the confiscation of the offending vehicle and simultaneously he modified the order by imposing a penalty of Rs.5000/- to be paid by the appellant of that appeal. By operative portion of that order, it was further directed that on payment of such penalty by the appellant, the respondent no.2 shall give the custody of the offending vehicle to the appellant of that appeal

2.3. As per Sub-Section (2) of Section 61(D) of the Act an order of the Sessions Judge under sub-section (1) is to be treated as final and it cannot be questioned in any Court of Law, the State Government has preferred this writ petition under Article 227 of the Constitution of India.

2.4. During the pendency of this present mater, the respondent i.e. the owner of the tempo moved this Court by filing Misc. Criminal Application NO. 2525 of 1990 with a request to this Court to release the tempo & hand over the same to him on suitable conditions. That Misc. Criminal Application No. 2525 of 1990 came to be decided by this Court (Coram: N.J. Pandya, J) on 27.11.1990. By order dated 27.11.90, this Court directed that pending the disposal of Special Criminal Application No. 1395 of 1989 i.e. the present matter, Vehicle No. GRV 7003 lying with the Deputy Conservator of Forests, Baria Division, Baria be handed over to the applicant i.e. the owner of the tempo on his executing a bond of Rs.50000/- with a surety of like amount and the final custody of the vehicle shall abide by the order that may be passed after hearing the said application i.e. Misc. Criminal Application No. 1395 of 1989. It is pertinent to note that the State Government has not challenged that order dated 27.11.90 of this Court by which

custody has been given to the present respondent.

3. I have heard Shri B.Y.Mankad, Learned APP for the State i.e. the petitioner and Shri Akshay Mehta for the respondent i.e. the owner of the tempo. I have perused the documents produced by the petitioner. During the course of arguments, Shri B.Y.Mankad, on query being made by this Court, produced a copy of the order dated 25.11.88 passed by the Assistant Conservator of Forests. It is taken up on record. As submitted by Mr.B.Y.Mankad, said order has been passed u/s 68 of the Act.

4. As this petition is filed under Article 227 of the Constitution of India, it would be profitable to place on record the legal position with regard to the scope and ambit of Article 227 of the Constitution of India and the powers which can be exercised by this Court in such petition.

5. Shri Akshay Mehta, Learned Advocate for the respondent had cited the following authorities:-

(A) Barot Jaganath Maganlal and Another Vs. Parshottamdas Nathubhat Brahmbhatt and Others, .

In this case, it has been held by this Court as follows:-

"It is well-settled that the remedy under Article 227 of the Constitution is an extra-ordinary remedy which a party is not entitled to claim as a matter of right. It is a discretionary remedy which the Court grants where substantial justice requires its interposition. It is not granted merely for the purpose of correcting the errors of law. As observed by the Supreme Court in D.N. Banerji Vs. P.R. Mukherjee and Others, "unless there was any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for High Courts under Articles 226 and 227 of the Constitution to interfere."

(B) Sarpanch, Lonand Grampanchayat Vs. Ramgiri Gosavi and Another, .

In that case, an order passed by the concerned Authority u/s 20 of the Minimum Wages Act was challenged. Admittedly, as observed by this Court, when no appeal would lie from an order of the authority u/s 20 and therefore the aggrieved party has filed a writ petition under Article 227 of the constitution of India. While dealing with the subject, this Court has held that power under Article 227 of the Constitution of India is not great than the power under Article 226 and is limited to seeing that the Tribunal functions within the limits of its authority.

By placing reliance on case of Nagendra Nath Bora and Another Vs. The Commissioner of Hills Division and Appeals, Assam and Others, , it has been held by the Hon"ble Supreme Court that High Court will not review the discretion of the Authority judicially exercised, but it may interfere if the exercise of the discretion is capricious or perverse or ultra vires. It has been further held that the High Court may refuse to interfere under Article 227 unless there is grave

miscarriage of justice.

(C) Khalil Ahmed Bashir Ahmed Vs. Tufelhussein Samasbhai Sarangpurwala, .

It has been held that where 2 views are possible and the Trial Court has taken one view which is possible and plausible view because another view is attractive, the High Court should not interfere with the finding of the Trial Court under Article 227 of the Constitution of India.

6. Keeping in mind, the aforesaid legal position with regard to scope and ambit of Article 227 of the Constitution of India, the rival contentions of both the parties are dealt with hereinafter.

6A. Shri B.Y.Mankad, Ld. APP for the State has argued that the owner of the truck has committed a distinct and separate offence and that offence is punishable u/s 67 of the Act for contravention of Rule 66 of the Bombay Forest Rules, 1942 (in short "the rules"). Admittedly, that rules are made by the State Government in exercise of powers u/s 41 of the Act. Shri B.Y.Mankad has by reading the judgement which is challenged in this writ petition argued that the Learned Sessions Judge has noted down the following certain admitted facts in para 7 of his judgement:-

- i. Tempo NO. GRV-7003 is of the ownership of the appellant i.e. the present respondent.
- ii. The wood seized consisted of teak and injalli balies and the same were apprehended by the Round Forester.
- iii. The Tempo was apprehended by the Forest Officer.
- iv. Teak and injalli balies were being transported without any pass or permit by the driver of the tempo.

As against the judgement of the Learned Appellate Judge, the owner of the tempo has not filed any petition like this present petition and therefore the owner of the tempo has nothing to say against the admitted facts narrated by the Appellate Judge in his judgement in para 7 of his judgement. Shri B.Y.Mankad, Ld. APP for the State has argued that looking to the finding of the Learned Appellate Judge, the Appellate Judge ought not to have set aside the order of confiscation and he ought not to have modified the order by imposing penalty of Rs.5000/-. Shri Mankad has further argued that the Learned Appellant Judge has observed in Para 8 of his order that looking to the facts of the case, he has been convinced that the appellant had knowledge of the fact that forest produce was sought to be transported in his tempo which he hired out. The Learned Appellate Judge has not accepted the defence of the appellant i.e. the owner of the tempo that there was no connivance on his part or that he did not have any knowledge that his driver was transporting the teak and injalli wood belonging to the State Government. In view of this finding, the Learned Appellate Judge ought not to have set aside the order of confiscation because the Deputy Conservator of

Forests passed an order dated 17.10.1988 with regard to confiscation of tempo u/s 61(A) of the Act, as he was satisfied that forest offence is believed to have been committed in respect of forest produce which is the property of the State Government. He has further argued that in view of Section 61(B)(2) of the Act, the owner of the tempo has failed to prove that tempo was used in carrying the forest produce without the knowledge and connivance of the owner himself and therefore for the Learned Appellate Judge there was no other alternative except to confirm the order of confiscation and legally he cannot set aside the order of confiscation.

7. The second contention taken by Shri B.Y.Mankad is with regard to expiry of limitation period for preferring an appeal by the owner of the tempo u/s 61(D) of the Act. He has argued that as per Section 61(D)(1) of the Act, aggrieved person can file an appeal within 30 days from the date of communication of order to him. Admittedly, the owner of the tempo had filed appeal to the Sessions Court after about six months. He has argued that the Learned Appellate Judge ought not to have condoned the delay because the grounds stated by the appellant in his Appeal Memo were not sufficient to condone the delay. At one stage, Shri Mankad has argued that the Learned Sessions Judge has not assigned any reason for condoning the delay but subsequently when he read the appeal memo for delay condonation he has submitted that the appellant has stated grounds in the appeal memo for delay condonation and the Learned Sessions Judge has without discussing anything with regard to that grounds, straightaway condoned the delay and therefore the judgement is erroneous and same is required to be set aside.

8. As against this, Shri Akshay Mehta, Learned Advocate for the respondent has argued that in view of Section 61(D) of the Act, the Learned Sessions Judge has been invested with the powers to modify the order in a suitable case. He has further argued that the Learned Sessions Judge has assigned cogent and convincing reasons for arriving at a conclusion that order of confiscation of the tempo is required to be modified by imposing penalty of Rs.5000/-. He has further argued that the Learned Sessions Judge has taken into consideration the facts and circumstances of the case and thereafter he has come to the said conclusion and therefore in no case, it can be said that it is illegal or contrary to law and such type of order cannot be set aside in this type of petition filed under Article 227 of the Constitution of India.

9. With regard to limitation point, Shri Mehta has argued that the Learned Sessions Judge exercised his powers u/s 5 of the Limitation Act. It was his subjective satisfaction for condoning the delay by considering the grounds stated in Appeal Memo and when once the Appellate Judge has condoned the delay, the finding to that effect cannot be set aside because the appeal is finally decided and that judgement in appeal has been challenged in this writ petition. He has further argued that looking to the scope and ambit of Article 227 of the Constitution of India, this is not a case in which this Court should interfere with

the order of the Appellate Judge because the learned Sessions Judge appreciated the facts and circumstances of the case and in exercise of his powers conferred upon him u/s 61(D) of the Act, he has modified the order passed by Deputy Conservator of Forests. He has further argued that in view of Section 61(D) of the Act, when powers to modify are given to the Sessions Judge, he can either enhance the penalty or reduce the penalty. Here, in this case on hand, the order of confiscation of tempo has been challenged. The Learned Sessions Judge has thought fit and necessary to reduce the penalty of confiscation of tempo to an order of penalty of Rs.5000/- which was within his powers and therefore this petition deserves to be dismissed and order of the Sessions Judge is required to be confirmed.

10. Shri B.Y.Mankad, Ld. APP has cited the following 2 authorities in support of his arguments.

1. State of Karnataka Vs. V.K.krishnan reported in 2000 Criminal Law Journal 3971, wherein it has been held in Para 7 as under:-

"7. Before passing an order for releasing the forest produce or the property used in the commission of the forest offence, the Authorised 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 produce and the tools, boats, vehicles, cattles, etc. used in the commission of the forest offence, which are liable to forfeiture, should not be released....."

Shri Akshay Mehta, Learned Advocate for the respondent has drawn the attention of this Court to the same Para 7, wherein the Honourable Supreme Court has held as below:-

"7. 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....."

Therefore, the mandate of this authority is not that in each and every case, the property involved in the forest offence must be confiscated. The powers are there with the Appellate Authority to pass appropriate orders under the circumstances of each case.

2. State of Gujarat V. Luhana Prabhudas Vrajlal reported in 1990(2) (2) GLR 1300.

In that case, the Learned Sessions Judge failed to look to the relevant provisions of section 61(B) of the Forest Act while deciding the appeal. It has been further held that though under Article 227 of the Constitution of India, the scope of interference by the High Court is limited. In that case there was non application of mind by the Learned Additional Sessions Judge to the relevant provisions of the Act and therefore, the High Court interfered with the order of the Appellate Court by exercising the powers under Article 227 of the Constitution of India.

Here, in this case on hand, the Learned Sessions Judge has specifically observed that the defence of the appellant that there was no connivance on his part or that he did not have any knowledge that his driver was transporting teak and injalli balies belonging to the State Government, was not accepted and therefore this is not a case where Section 61(B)(2) is not considered by the Appellate Judge. When he passed the said order, this fact was in his mind. Shri Mankad has argued that in view of the observations of the Sessions Judge, the Learned Sessions Judge had no other option except to confirm the order of confiscation. Here, in this case, if we read para 8 of the judgement, we find that the learned Sessions Judge has assigned reasons for not confiscating the vehicle and that reasons are possible, plausible and based on facts because the wood which was being carried in the offending vehicle was worth Rs.261.75 ps. only. Shri Mehta has argued that looking to the value of the wood which was being carried in the offending vehicle, it was not just and proper to confiscate the tempo worth Rs.50,000/- because this Court has directed the owner of the tempo to execute a bond of Rs.50,000/-. when this Court passed an order in Misc. Criminal Application NO. 2525 of 1990.

11. Shri Mankad has argued that looking to Section 61(A) of the Act, the authorised Officer under the Act cannot taken into consideration the value of the forest produce and the property involved in the said offence. He has emphatically argued that once the authorised officer under the Act was satisfied that there was a reason to believe that forest offence has been committed by the offender then the property involved in the said forest offence is liable to confiscation and in view of that legal position of Section 61(A) of the Act, the Learned Appellate Judge had no other option except to pass one order, either to annul the order or to confirm the order. He can not modify the order by imposing penalty of Rs.5000/-.

12. Shri Akshay Mehta has argued that in this case, the forest offence has been committed by the driver and cleaner who were on duty on offending tempo at the relevant point of time. He has further argued that an act of carrying the wood in the tempo by driver and conductor and an act of allowing tempo for their purpose, had arisen from one event only and therefore it cannot be said that the owner of the tempo has committed a separate and distinct offence. These arguments are not acceptable because there is a specific contravention of Rule 66 of the Rules and that contravention is punishable u/s 66 of the Act. At the same time, this Court has also to take into consideration the order u/s 68 of the act passed by the Competent authority. When the Deputy Conservator of Forests passed an order of confiscation on 17.10.1988, he also passed an order that case be sent to Forest Department to take a legal action against the persons involved in the offence i.e. forest offence. When a query was made as to what was the outcome of the legal action, if any taken by the Forest Department, Shri Mankad has submitted that for all the persons involved in the said forest offence, the Asst. Conservator of Forests passed an order u/s 68 of the Act which is with regard to compounding of offences. As per Section 68 of the Act, powers are

given to a Forest Officer authorised by the State Government to compound the offence by accepting a payment of sum of money from the person involved in the forest offence. When it is the case of the State Government that all the persons involved in the forest offence including contravention of Rule 66 of the Rules, are discharged from the case by compounding the offence, it can be said that all the persons are acquitted as per Section 320(8) of the Criminal Procedure Code, 1973. When the compounding of the offence is there, that compounding of offence will have the effect of 'acquittal' of the accused with whom the offence has been compounded. Thus, in the eye of law, the concerned Competent Officer has by passing an order u/s 68 of the Act acquitted the owner of the truck also from the forest offence because the forest offence has been compounded for all the persons involved in the said case relating to forest offence. This fact is also required to be taken into consideration when this writ petition is to be decided by this Court. When other persons (including the owner of the truck) are allowed to go free for forest offence, that fact is required to be taken into consideration to decide as to whether order under challenge is legal or not.

13. Shri Akshay Mehta, Learned Advocate for the respondent has argued that when powers are given to the Appellate Judge to modify the order u/s 61(D) of the Act, that power includes a power to pass an order for enhancement of the penalty or reduction of the penalty. For this he has cited an authority of The Western India Theatres Ltd. Vs. Municipal Corporation of The City of Poona, . He has also referred a legal dictionary for the word "modify".

"Modify means to alter; to change in incidental or subordinate features; enlarge; extend; amend; limit; reduce. Such alteration or change may be characterized, in quantitative sense, as either an increase or decrease."

When powers are given to the Appellate Judge, u/s 61(D) of the Act, he can modify the order by an appropriate order. Here, in this case, the Authorised Officer under the Act confiscated the tempo of which value can be ascertained in rupees. The Learned Sessions Judge came to a conclusion that in the case before him, it was necessary to modify the order of confiscation of the tempo. That modification by way of reduction cannot be made by allowing the tempo owner to take away either tyre or battery or steering wheel and naturally when such type of order is required to be modified, one may keep before his eyes the value of the article which has been confiscated and therefore the Learned Sessions Judge thought it fit to modify the order by directing the respondent to pay a penalty of Rs.5000/-. In operative part of the order, the Learned Sessions Judge has observed that the said order of confiscation has been set aside and at earlier breath he has observed that he is modifying the order. After all, we have to see the effect of the order as to what is conveyed by the Appellate Judge. Looking to the operative part of the order, the Learned Sessions Judge thought it fit that by paying penalty of Rs.5000/- by the appellant, the ends of justice would meet and therefore he has also used the words "is modified" also and therefore looking to the totality and the effect of the order, it can be said that order of confiscation

has been modified by the Learned Appellate Judge within the bounds of Section 61(D) of the Act.

14. It may be noted that "to modify the order of confiscation", the Learned Sessions Judge has given reasons in detail in para 8 of his judgement. That reasons are possible and plausible. It may be that these reasons are not liked by the State Government but looking to the reasons assigned by the Appellate Judge, it cannot be said that the order is passed without assigning reasons.

15. So far question of condonation delay is concerned, the Learned Sessions Judge has exercised his powers to condone the delay u/s 5 of the Limitation Act. He has dealt with the subject of condonation of delay in para 9 of the judgement. He has taken into consideration the grounds for delay condonation taken in the appeal memo. It was his subjective satisfaction, ofcourse, judicial discretion to condone the delay. Reasons appear to be possible and plausible. When the Learned Sessions Judge found that there was "a sufficient cause" for not preferring appeal within the prescribed period then this Court feels that it should not interfere in the finding based on subjective satisfaction of the Learned Sessions Judge. Hence, arguments that the Learned Sessions Judge ought to have dismissed the appeal on sole ground of `delay" are not worth acceptable. Hence contention of Shri Mankad with regard to delay condonation is rejected.

16. Under the circumstances, this Court is of a view that the Learned Sessions Judge has taken into consideration the facts and circumstances of the case and then he has exercised his powers conferred upon him u/s 61(D) of the Act and therefore in no case, it can be said that there was a grave dereliction of duty on part of the Appellate Judge or that there was a flagrant violation of the principles of law and justice. It cannot be said that grave injustice has been done by the learned Sessions Judge by passing the order and therefore this court is of the view that this is not a case where this Court should interfere with the order challenged in this writ petition.

17. In view of this, this writ petition is devoid of merits and it deserves to be dismissed. Accordingly, this Writ Petition is dismissed. Rule discharged. The interim order dated 27.11.1990 passed in Misc. Criminal Application No. 2525 of 1990 which is effective and operative till this date, is made absolute. There shall be no order as to costs.