

(2000) 07 KAR CK 0106

In the Karnataka High Court

Case No : Criminal Revision Petition No. 81 of 1999

State of Karnataka and Another

APPELLANT

Vs

Chandra Devi Jain H.P.

RESPONDENT

Date of Decision : 10-07-2000

Acts Referred:

Karnataka Forest Act, 1963 — Section 62 (1), 71 A, 71 B (1), 71 F
Motor Vehicles Act, 1988 — Section 2 (30), 51 (5)

Citation : (2000) ILR (Kar) 3657 : (2000) 6 KarLJ 291 : (2000) 4 KCCR 373 SN

Hon'ble Judges : G. Patribasavan Goud, J

Bench : Single Bench

Advocate : Sri N.V. Prakash, State Public Prosecutor, for the Appellant;

Judgement

1. The vehicle CNX 3767 is subject to hire-purchase agreement, the respondent herein being the financier, and the RC holder being one Mohammed. The said vehicle was seized u/s 62(1) of the Karnataka Forest Act, 1963 ("Forest Act" for short) on the, officer concerned having reason to believe that a forest offence has been committed. Confiscation proceeding were initiated in that regard u/s 71-A of the Forest Act. The vehicle, in due course was ordered to be confiscated. It even vested in the Government u/s 71-F of the Forest Act. The vehicle has since been sold in public auction for Rs. 23,000. After all this happened, the respondent-financier questioned the confiscation order in an appeal before the learned Sessions Judge, Dakshina Kannada, Mangalore, in Criminal Appeal No. 134 of 1994 on the ground that the confiscation order is in violation of the mandatory provisions of the Forest Act, as also the principles of natural justice, inasmuch as, the said financier had not been issued with notice of the confiscation proceedings by the authorised officer before the confiscation order came to be passed. The learned Sessions Judge, by the order impugned herein, has accepted that plea by holding that, in a confiscation proceeding u/s 71-A of the Forest Act, even a financier, as of right, is entitled to notice, and that, order of confiscation passed without notice to the financier would not be legally sustainable. The learned Sessions Judge has, on this footing, set aside the order

of confiscation and has remitted the matter to the authorised officer for hearing the matter afresh after giving to the financier an opportunity of being heard as required under law. Aggrieved by this order, the authorised officer has come up in revision.

2. Section 71-B(1) of the Forest Act, inter alia, provides that, no order confiscating a vehicle shall be made u/s 71-A except after notice in writing to the person from whom it is seized and considering his objections if any. Proviso to the said sub-section (1) of Section 71-B of the Forest Act provides 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 be so, and considering his objections if any.

Without prejudice to the above said provisions of sub-section (1), sub-section (2) of Section 71-B of the Forest Act, inter alia provides that, no order confiscating a vehicle shall be made u/s 71-A if the owner of the vehicle proves to the satisfaction of the authorised officer that it was used in carrying offending forest produce concerned (sandal-wood in the present case) without the knowledge or connivance of the owner himself, his agent if any, and the person in charge of the vehicle, and that each one of them taken all reasonable and necessary precautions against such use.

It could be seen from the proviso to sub-section (1) of Section 71-B of the Forest Act that, under the said proviso, notice is to be given to the registered owner of the vehicle. It would therefore, be appropriate to conclude that when the word "owner" is used in sub-section (2) of Section 71-B of the Forest Act, it refers to the registered owner as mentioned in proviso to sub-section (1) of Section 71-B of the Forest Act. It also stands to reason to so construe, for the reason that, it is the said owner who can prove to the satisfaction of the authorised officer in order to prevent an order of confiscation being passed, that even if the vehicle had been found to be used in the commission of a forest offence, it was without the knowledge or connivance of the said owner, his agent if any, and the person in charge of the vehicle, and that, each one of them had taken all reasonable and necessary precaution against misuse of the vehicle.

As per the definition of "owner" u/s 2(30) of the Motor Vehicles Act, 1988 ("M.V. Act" for short), "owner" means a person in whose name motor vehicle stands registered. The said definition, inter alia, further provides that, in relation to a motor vehicle which is the subject-matter of a hire-purchase, owner means the person in possession of the vehicle under that agreement.

As per the said definition of "owner" u/s 2(30) of the M.V. Act, so far as the vehicle herein is concerned, same being subject-matter of hire-purchase agreement between the respondent-financier and one Mohammed who has taken possession of the vehicle, it is the said Mohammed who would be the owner within the meaning of Section 2(30) of the M.V. Act. Of course, it would be open to the financier, as per the terms of hire-purchase agreement, to take possession

of the vehicle in the event there is default in payment of instalments. Where the financier so comes in possession of the vehicle, it would be open to the financier to have the registration certificate issued in his name under sub-section (5) of Section 51 of the M.V. Act. The financier would then become the registered owner and owner for the purpose of the proceedings u/s 71-A of the Forest Act and would be entitled to a notice u/s 71-B of the Forest Act.

3. In the present case, all that is alleged is that Mohammed had committed default in paying the instalments, and that, the financier therefore was searching for the vehicle for the purpose of taking possession of the same. That was the position that was being pleaded even at the stage of appeal before the learned Sessions Judge. That means that, as on the day the vehicle was seized u/s 62(1) of the Forest Act, as on the day the confiscation proceedings were initiated u/s 71-A of the said Forest Act, as on the day on which notice was ordered u/s 71-B of the said Act, as on the day on which the order of confiscation came to be passed u/s 71-A of the said Act, and also, as on the day the confiscated property came to be vested in the Government u/s 71-F of the said Act, the respondent-financier had not become the registered owner of the vehicle even u/s 51(5) of the M.V. Act. Therefore, except the right to seize the vehicle in terms of the hire-purchase agreement in the event of default in payment of instalments, the respondent-financier had no right to step into the shoes of the registered owner in a confiscation proceeding u/s 71-A of the Forest Act for being entitled to notice u/s 71-B of the said Act. The learned Sessions Judge therefore, was in error in holding that, as of right, in a confiscation proceeding u/s 71-A of the Forest Act, the financier would be entitled to notice u/s 71-B of the Forest Act. May be, in a case where, at the relevant point of time, financier has taken possession of the vehicle for failure to pay instalments and has got registration certificate issued in his name u/s 51(5) of the M.V. Act, he would be the person, as owner of the vehicle, entitled to notice u/s 71-B of the Forest Act. But, in a case like the present one, where at the relevant point of time, the financier had not come into the picture by not taking possession of the vehicle for failure to pay instalments and not getting the registration certificate issued in his favour u/s 51(5) of the M.V. Act, such a financier cannot, as of right, insist on a notice u/s 71-B of the Forest Act and an opportunity of being heard in a confiscation proceeding.

Even from the point of view of compliance with the principles of natural justice, such a notice and such an opportunity of being heard, cannot be insisted upon by the financier for this reason. An opportunity like the one contemplated in Section 71-B of the Forest Act would enable the owner of the vehicle concerned to prove to the satisfaction of the authorised officer that the vehicle had been used in carrying the offending forest produce without his knowledge or connivance and without the knowledge or connivance of his agent if any, and without the knowledge or connivance of the person in charge of the vehicle, and that, each one of them had taken all reasonable and necessary precautions against such misuse. It would be the registered owner, having taken possession of the vehicle, that would be in a position to prove these aspects to the satisfaction of the

authorised officer. The financier by the very nature of things, will not be monitoring the day-to-day use of the vehicle and the purpose for which the vehicle is being used and the manner in which it is being used. In the scheme envisaged in sub-section (2) of Section 71-B of the Forest Act, therefore, it would be anomalous to place the financier, who has not yet taken possession of the vehicle for failure to pay instalments and who has not yet himself registered as owner by taking steps u/s 51(5) of the M.V. Act, in the position of owner of the vehicle, for the reason that, the financier would not be in a position to prove before the authorised officer about absence of knowledge or connivance or about taking all reasonable and necessary precaution against misuse of the vehicle. Thus, even from the point of view of principles of natural justice, such a financier would not be entitled to notice u/s 71-B of the Forest Act.

4. Petition is, therefore, allowed. Impugned order is set aside.