

(1991) 01 BOM CK 0053

In the Bombay High Court

Case No : Criminal Writ Petition No. 706 of 1986

State of Maharashtra and Another

APPELLANT

Vs

Kisan Genu Pawar

RESPONDENT

Date of Decision : 16-01-1991

Acts Referred:

Forest Act, 1927 — Section 52, 61A

Citation : (1991) 2 BomCR 167

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : S.S. Keluskar, for the Appellant; Nitin Jamdar, for Bhimrao N. Naik, for the Respondent

Judgement

M.F. Saldanha, J.—This is a petition filed by the State of Maharashtra and is directed against an order passed by the learned Additional Sessions Judge, Satara in Criminal Appeal No. 108 of 1985. The learned Addl. Sessions Judge was dealing with an order dated 23-10-1985 passed by the Divisional Forest Officer, Satara, rejecting the application of the present respondent for the release of his truck and trolley which had been seized by the officers of the Forest Department and was liable for confiscation. The truck No. MTM 4231 and the trolley No. MTL 7291 had been seized by the Range Forest Officer, Mobile Squad, Satara on 7-8-1985. Admittedly, at the time when the vehicles were seized, there was no forest produce being carried in either of them. The admitted position is that the vehicles were found empty and were parked in front of the respondent's residence. The record shows that a few days earlier, on or about 3rd of August 1985, that the officers of the Forest Department apprehended two persons while carrying teak wood that had been obtained through illicit felling. These persons were arrested as also some of their accomplices. In the course of the investigation, the statements came to be recorded of these persons as also of the owner of a nearby saw-mill and it is the case of the department that all these persons are alleged to have stated that the truck and trolley in question were used for the transport of timber. It is on this basis that the Range Forest Officer

seized the vehicles under a panchnama on 7-8-1985.

2. In the course of the enquiry, a show cause notice was issued to the present respondent in his capacity as owner of the vehicles. The respondent filed his reply and contended that no ground had been made out for seizure of the vehicles belonging to him. The D. F. O. recorded the statements of other persons in the course of the enquiry and recorded a finding that the statements of all the persons, recorded by him, unequivocally indicate that the present two vehicles were being regularly used for the transport of timber and that consequently, the vehicles were liable for confiscation in so far as according to the D. F. O. they form the subject matter of the offence in question, insofar as they were used in the commission of the offence.

3. Mrs. Keluskar, learned Assistant Public Prosecutor contended that this Court should take a very strict view of any offences relating to the Forest Act, particularly in view of the wanton depletion of the forest wealth and in view of the extreme difficulties experienced by the department in combating such offences. She further contended, that in the present case, where the investigation indicated that the two vehicles had been regularly used for the transport of timber, that the D. F. O. was wholly justified in having ordered the confiscation of the vehicles. There can be no quarrel with regard to the proposition put forward by Mrs. Keluskar and it is equally true that a stringent view is required to be taken in respect of the commission of offences particularly under the Forests Act. These offences are penal offences and consequently, this Court will also have to be guarded in its approach in so far as a very high degree of proof and strict compliance with the principles relating to the proof of offences will have to be complied with before an adverse finding can be recorded.

4. Mr. Jamdar, learned advocate appearing on behalf of the respondent has contended that the seizure of the vehicles in the present case is wholly unjustified in so far as the clear provisions of section 52 of the Forests Act contemplate that a vehicle which is involved in the transport of forest produce and consequently is involved in the commission of an offence is liable for seizure along with the forest produce in question. He rightly points out that on the facts of the present case, the vehicles were not seized along with any illicit material. He further pointed out, that even in the course of investigation, it may be permissible in a given situation to seize a vehicle that is the subject matter of the commission of an offence, provided, the ingredients of section 61-A of the Indian Forest Act, 1927 are satisfied. Normally, the vehicles that are the subject matter of an order of confiscation are the vehicles that are used for the transport of forest produce such as timber, that has been illicitly, felled, and to this extent, the present case provided an exception where, admittedly, no such forest produce was found transported. Merely on the basis of statements made by certain other persons, who themselves are in the position of accused before the Court, it would be unsafe in the first instance to record a finding that the vehicles in question are liable for confiscation. The confiscation of a vehicle is a very

harsh and a serious penalty and it can be resorted to in those cases where the offence conclusively indicates of no other possibility.

5. On a perusal of the order passed by the D. F. O., it is found that the present vehicles were being used regularly for the transport of timber by several persons, one of whom was the department itself and that substantial amounts of money had been paid to the respondent as and by way of charges for the use of the vehicles. In the light of this, the D. F. O. was wrong in having jumped to the conclusion that the present vehicles are liable for confiscation on the ground that they are involved in the commission of offences. Admittedly, when the present offence was detected, the vehicles in question were not being used for transport of any illicitly felled timber.

6. In this view of the matter, and on the special facts and circumstances of the present case, the order of the learned Sessions Judge in appeal, setting aside the order of the D.F. O. is a correct order and cannot be found fault with. In the circumstances, the present petition fails and stands rejected. Rule is accordingly discharged.

7. Mrs. Keluskar points out that at the time when rule was issued on the present petition, that this Court had granted stay of the operation of the appellate order. Mrs. Keluskar prays for continuance of the said order for a period of 12 weeks as the department would like to consider whether any further steps are required to be taken in view of the present order. That application is granted. The interim order passed shall continue for a period of 12 weeks and shall stand automatically vacated thereafter, if no other orders from the appeal Court are obtained in the meanwhile. In the event of the State taking out any further proceedings, notice of the same shall be given to the respondent.