

(1999) 09 BOM CK 0052

In the Bombay High Court

Case No : Criminal Writ Petition No's. 7 and 239 of 1997

State of Maharashtra and etc.

APPELLANT

Vs

Suja Karan Rabbani and etc.

RESPONDENT

Date of Decision : 14-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 457
Forest Act, 1927 — Section 2(4), 26(1), 32(1), 52(1), 55(1)

Citation : (2000) 5 BomCR 899 : (2000) CriLJ 664

Hon'ble Judges : S.D. Gundewar, J; J.N. Patel, J

Bench : Division Bench

Advocate : M.P. Badar, Spl.C, for the Appellant; Shashikant Borkar and Prashant Sangidwar, for the Respondent

Judgement

S.D. Gundewar, J.—In both these criminal writ petitions the facts are identical and they raise a common question of law and, therefore, can be conveniently disposed of by this common judgment.

2. The facts necessary for the disposal of these writ petitions are as follows :-

On 16-11 -1996 some Forest Officers while taking a round by Kakodi-Chichgad Road in a jeep, noticed that the respondent and others were grazing sheep and goats deep inside the compartment No. 660 of the protected forest. On seeing those cattle grazing there, the Forest Officers went towards the said place, stopped the jeep and got down from it. They had then seized in all 105 sheep and 11 goats which were found grazing in the said compartment of the protected forest. The Forest Officer, who had seized those cattle u/s 52(1) of the Indian Forests Act, 1927 (hereinafter referred to as "the Act") also found that those cattle ate and damaged forest produce such as grass, young plants of Saja, Bija, Garari, Dhawada, Ghoti and Rohan. The total loss caused by those cattle was estimated to Rs. 77,700/-.

3. On the next day, i.e. on 17-11-1996, the respondent approached the Range

Forest Officer, Chichgad, and admitted that those cattle belong to him. At that time he also informed the Range Forest Officer that one Karan Deba Rabbani was the person who was grazing the cattle in the forest area.

4. The Range Forest Officer then registered an offence No. 115/2869 against the respondent on 16-11-1996 itself and sent a report regarding the seizure u/s 52 of the Act to the Judicial Magistrate, First Class, Sakoli, as well as to the authorised officer. The offence was registered under sections 26(1)(d), (f), (g) and 32(1) of the Act and Rule 66 of the Bombay Forest Rules, 1942, and after completion of investigation, the charge-sheet came to be filed against the respondent in the Court of Judicial Magistrate, First Class, Sakoli. The said case was numbered as Criminal Case No. 3625 of 1996.

5. During the pendency of the aforesaid criminal case on 19-11-1996, the respondent filed an application u/s 457 of Code of Criminal Procedure for the release of his cattle, i.e. sheep and goats, on supratnama. The petitioner had opposed the said application by filing its reply. Not only that but the petitioner had also filed an application under sections 55(1) and 68 of the Act seeking permission for sale of the seized cattle by public auction.

6. The learned Judicial Magistrate, First Class, Sakoli, after hearing both the sides allowed the respondent's application for release of the cattle on supratnama and rejected the petitioner's application for sale of the seized cattle by public auction vide his order dated 22-11-1996.

7. Being aggrieved by the aforesaid order, the petitioner-State preferred a Criminal Revision Appln. No. 94 of 1996 before the Sessions Judge, Bhandara. However, after hearing both the sides, the learned Sessions Judge, Bhandara, dismissed the said criminal revision application holding that as it was filed against an interlocutory order passed by the learned Magistrate, it was not tenable.

8. Being dissatisfied by the aforesaid order passed by the learned Sessions Judge, Bhandara, the petitioner-State has come up to this Court with Criminal Writ Petition No. 7 of 1997.

9. After the learned Judicial Magistrate, First Class, Sakoli, had passed an order allowing the respondent's application for release of the cattle on his supratnama on 22-11-1996, the Authorised Officer passed an order on 13-1-1997 regarding confiscation of the cattle in question u/s 61-A of the Act. The said order passed by the authorised officer on 13-1-1997 was challenged by the respondent before the learned Sessions Judge, Bhandara, in Criminal Appeal No. 4 of 1997. The learned Additional Sessions Judge, Bhandara, after hearing both the sides allowed the said appeal on 20-6-1997 by setting aside the order passed by the authorised officer.

10. Being aggrieved by the aforesaid order passed by the learned Additional Sessions Judge, Bhandara, the petitioner-State has come up to this Court with

11. Shri Badar, learned Special Counsel, appearing for the petitioner-State in both the petitions, while questioning the correctness and legality of the impugned orders, submitted that in view of the provisions of section 61 -G of the Act the learned Magistrate had no jurisdiction to pass an order regarding the release of cattle in question on supratnama and as the said order was passed by the learned Magistrate without jurisdiction, it ought to have been set aside by the learned Sessions Judge, Bhandara, by allowing the Criminal Revision Appln. No. 94 of 1996. Shri Badar, learned Special Counsel, also submitted that after the Authorised Officer had passed an order on 13-1-1997 regarding the confiscation of the cattle in question u/s 61-A of the Act, by following the due procedure, the learned Addl. Sessions Judge, Bhandara, should not have allowed Criminal Appeal No. 4 of 1997. According to Shri Badar, not only that but the learned Addl. Sessions Judge had also not considered the provisions of section 61-G of the Act while allowing the Criminal Appeal No. 4 of 1997. According to Shri Badar, had the learned Additional Sessions Judge considered those provisions then he would not have set aside the order passed by the Authorised Officer regarding the confiscation of cattle in question u/s 61-A of the Act.

12. In support of his aforesaid contention Shri Badar relied upon a case in Kama Laxman Gawali v. State of Maharashtra, 1989 Mah.L.J. 780 wherein the Division Bench of this Court held that the cattle unauthorisedly trespassed and pastured in the reserved forest damaging forest produce are liable for confiscation. Being aggrieved by the said decision, the petition for Special Leave to Appeal (Criminal) No. 882 of 1989 was filed before the Apex Court. However, the Apex Court vide its decision dated 9-1-1990 summarily dismissed the said Cri. Misc. Petition No. 1786 of 1989. In view of this, we find considerable force in the aforesaid submission made by Shri Badar, learned Special Counsel, appearing for the petitioner-State.

13. Shri Borkar, learned Counsel appearing for the respondent, submitted that the second proviso to section 52(2) of the Act provides that, "where the offence on account of which the seizure has been made is in respect of timber, sandalwood, firewood, charcoal or such other forest-produce as may be notified by the State Government from time to time (hereinafter referred to as the "notified forest-produce") and which is the property of the State Government, such officer shall make a report of such seizure also to the concerned Authorised Officer u/s 61-A" and if such a report is made u/s 61-A of the Act to the Authorised Officer then only the Magistrate does not get jurisdiction to release the property on supratnama. However, if such report is made also to the Magistrate, then the Magistrate has jurisdiction to release the seized property on supratnama. For this he placed reliance on a decision in Kamlesh Vs. State of Maharashtra and another, . In the said case the learned Single Judge of this Court held that the mandatory provisions of sections 61-A to 61 -G of the Act are not applicable if the forest produce is not notified. This clearly indicates that the

aforesaid provisions are applicable if the forest-produce is notified.

14. In the present case, the seized cattle were found grazing the grass and the young plants, such as Saja, Bija, Garari, Dhawada, Ghoti and Rohan etc. The forest produce has been defined in section 2(4) of the Act. It provides as under :

"(4) "forest produce" includes-

(a)

(b) the following when found in, or brought from, a forest that is to say :-

(i) trees and leaves, flowers and fruits and all other parts or produce not hereinafter mentioned, of trees,

(ii) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants.

(iii)

(iv)

So, it is clear from the aforesaid definition of the forest produce given in section 2(4) of the Act that the grass and other young plants are the forest produce. In the case at hand, the cattle ate the grass and young plants such as Saja, Bija, Garari, Dhawada, Ghoti and Rohan etc., which was a notified forest produce. In this view of the matter, we find that the aforesaid decision of the learned Single Judge of this Court, cited above by the learned Counsel for the respondent is not applicable to the facts of the present case and hence it is of no avail to the respondent.

15. Section 61-G of the Act provides as under :

"61-G. Bar of jurisdiction in certain cases.---Whenever any timber, sandalwood, firewood, charcoal or any other notified forest produce which is the property of the State Government, together any tool, boat, vehicle or cattle used in committing any offence is seized under sub-section (1) of section 52, the Authorised Officer u/s 61-A or the officer specially empowered u/s 61-C, or the Sessions Judge hearing an appeal u/s 61-D shall have, and notwithstanding anything, to the contrary contained in this Act or in the Code of Criminal Procedure, 1973 or in any other law for the time being in force, any other officer, Court, Tribunal or authority shall not have, jurisdiction to make orders with regard to the custody, possession, delivery, disposal or distribution of such property and any tool, boat, vehicle or cattle."

We, therefore, find that in view of the aforesaid provisions of section 61-G of the Act, the learned Judicial Magistrate, First Class, Sakoli, should not have passed an order releasing the cattle on supratnama of the respondent. By passing such an order, in our view, the learned Magistrate had exceeded his jurisdiction. In fact, the learned Sessions Judge while deciding the Criminal Revision Application No. 94 of 1996 ought to have considered this aspect of the matter in exercise of

his revisional power though he found that the said revision application was filed against an interlocutory order, but it seems that he has lost sight of this important aspect, which goes to the root of the matter and decided the said revision application holding that it was not tenable as it was filed against an interlocutory order passed by the learned Magistrate. We, therefore, find that the said order passed by the learned Sessions Judge, Bhandara, is erroneous and liable to be set aside.

16. This takes us to the order regarding confiscation of cattle in question passed by the Authorised Officer u/s 61-A of the Act on 13-1-1997. Admittedly the said order was passed by the Authorised Officer after the order regarding release of cattle on supratnama was passed by the learned Magistrate. This order of the Authorised Officer dated 13-1-1997 was impugned before the learned Additional Sessions Judge, Bhandara, by filing Criminal Appeal No. 4 of 1997. The learned Additional Sessions Judge, Bhandara, after hearing the parties allowed the said appeal and set aside the aforesaid order passed by the Authorised Officer on 13-1-1997. On perusal of the order dated 20-6-1997 passed by the learned Addl. Sessions Judge, Bhandara, what we find is that the learned Addl. Sessions Judge has not considered the matter in its proper perspective. In fact, he ought to have considered that the Authorised Officer had passed the impugned order dated 13-1-1997 u/s 61-A of the Act giving an opportunity to the respondent and following the due procedure. He also ought to have considered the provisions of section 61-G of the Act. His observations in para 9 of the judgment dated 20-6-1997 that the Magistrate may pass an order of release of the seized property u/s 59 of the Act are not only erroneous but misconceived. In fact, after the insertion of section 61-G in the Act, by way of amendment vide Indian Forest (Maharashtra Amendment) Act, 1984 (Act No. VII of 1985), the Magistrate does not get any jurisdiction u/s 59 of the Act to pass an order regarding the custody, possession, delivery, disposal or distribution of the seized property and any tool, boat, cattle or vehicle. It seems that the learned Additional Sessions Judge lost sight of this aspect of the matter and passed the aforesaid order on 20-6-1997 allowing Criminal Appeal No. 4 of 1997. In view of this, we find that the impugned order passed by the learned Additional Sessions Judge, Bhandara, in Criminal Appeal No. 4 of 1997 on 20-6-1997 is also liable to be set aside.

17. In the result, both the criminal writ petitions bearing Nos. 7 of 1997 and 239 of 1997 are hereby allowed. The impugned orders passed by the learned Judicial Magistrate, First Class, Sakoli, on 22-11-1996 in Summ. Cri. Case No. 3675/96 and by the learned Sessions Judge, Bhandara, in Criminal Revn. Application No. 94 of 1996 dated 4-12-1996 as well as the order dated 20-6-1997 passed by the learned Additional Sessions Judge, Bhandara, in Criminal Appeal No. 4 of 1997 are hereby set aside.

18. Writ petition allowed.