
(1990) 03 BOM CK 0033
In the Bombay High Court
Case No : C.W.P. No. 20 of 1990

State of Maharashtra and others

APPELLANT

Vs

Smt. Taranjeet Kaur

RESPONDENT

Date of Decision : 12-03-1990

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1992) CriLJ 1398

Hon'ble Judges : W.M. Sambre, J;V.A. Mohta, J

Bench : Division Bench

Advocate : D.D. Sinha, Asstt. Govt. Pleader, for the Appellant; S.C. Mehadia, for the Respondent

Judgement

V.A. Mohta, J.—By this criminal writ petition, the State of Maharashtra, the Conservator of Forest and the Assistant Conservator of Forest have jointly challenged the judicial order dated 25-1-1990 passed by the Additional Sessions Judge, Akola in an appeal under S. 61D of the Forest Act (the Act) releasing on supratnama motor vehicle confiscated under S. 61A of the Act.

2. The basic factual background is this :

The Maruti car being registration No. MTV 2974 was carrying teak wood from Patur to Akola. There was an unsuccessful attempt by the Police Officers to intercept the vehicle on the way. The vehicle was, therefore, chased and forced to stop. 89 pieces of cut teak wood unauthorisedly cut Government forest produce - were found inside the vehicle which was being driven by the regularly employed driver of the owner of the vehicle the respondent. The driver stated that the merely "obeyed the order of his master. A show-cause notice under S. 61B of the Act was issued to the driver as well as the owner as to why the vehicle should not be confiscated under S. 61A. The driver did not give any additional statement. The respondent stated that she had instructed the driver to take the car to Patur for carrying a patient from Main Hospital, Akola, and that she had no knowledge of what the driver did.

3. The Assistant Conservator of Forest (petitioner No. 3) after making enquiry ordered confiscation of the vehicle. Aggrieved by the said order of confiscation, revision before the Conservator of Forest (petitioner No. 2) was preferred by the respondent under S. 61C of the Act, but without any success. Thereafter, an appeal under S. 61D was filed before the Sessions Judge, which is still pending. In that appeal, the respondent filed an application for releasing the vehicle on her supratnama, which has been allowed and the said order is challenged in the petition inter alia on the ground of want of jurisdiction to pass such order in view of S. 61C of the Act.

4. With the assistance of Shri Sinha, the learned Public Prosecutor for the petitioners, and Shri Mehadia, the learned counsel for the respondent, we have gone through the record and examined the relevant provisions.

5. The learned counsel for the respondent has raised a preliminary objection to the maintainability of this petition on the grounds that (i) since the petitioners 2 and 3 had passed quasi-judicial orders of confiscation, they had no locus standi to file the petition, (ii) there is non-joinder of the Sessions Judge as a co-respondent. We do not see any substance in the preliminary objections. The State Government is the petitioner No. 1. There is no dispute about its locus standi to challenge the adverse order passed by the Sessions Judge. If that be the correct position, the petition does not become non-maintainable only because few more parties have joined as co-petitioners.

6. Considering the whole background including the nature of challenges raised, there can be no manner of doubt that in truth and substance this is a petition under Art. 227 of the Constitution in which judicial order passed in a statutory appeal is impugned. The Sessions Judge, therefore, is not a party without whom no order can be made effectively in this petition. Hence, we do not think he was a necessary party whose absence alone should entail dismissal of the petition. Such a view would be too hyper technical in this particular case.

7. A single Bench of Kerala High Court in the case of Divisional Forest Officer v. Pushpan 1983 KLT 951 has been relied upon in support of the preliminary objections. We do not think that ratio of that decision will have application to the case at hand. That was a decision upon a petition under Art. 226 filed by the Divisional Forest Officer and not by a State. Moreover, the question about real nature of the challenge and not the form being decisive in the matter, was neither raised nor considered in that decision. As far as this Court is concerned, that matter stands concluded in favor of the substance, in view of Full Bench decision in the case of Sushilabai v. Nihalchand 1989 MLJ 695.

8. Now, the merits of the matter. The learned counsel for the petitioners, inviting our attention to S. 61G of the Act, contended that the learned Sessions Judge had no jurisdiction to make order with regard to the custody, possessions, delivery, disposal or distribution of specified Government forest produce and any tool, boat, vehicle or cattle used in the commission of an offence and seized

under S. 52(1) of the Act. This contention is based on misconception and cannot be accepted. S. 61G reads thus :

"Wherever any timber, Sandalwood, firewood, charcoal or any other notified forest produce which is the property of the State Government, together with any tool, boat, vehicle or cattle used in committing any offence is seize sub-sec. (1) of S. 52, the authorised officer under S. 61A or the officer specially empowered under S. 61G or the Sessions Judge hearing an appeal under S. 61D 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."

The clear meaning of, and the underlying idea behind S. 61G is that only the authorised officer or the officer specially empowered or the Sessions Judge hearing appeal and none else will have the jurisdiction to pass the order and this is notwithstanding anything contrary contained in the Act or in the Criminal Procedure Code or any other law. We thus see no inherent lack of jurisdiction in the Sessions Judge passing the impugned order.

9. Is order legal though with jurisdiction, is the next question ? Now, the introduction of Ss. 61A to 61G by the Maharashtra Act No. 7 of 1985 has a definite objective and that is to pluck all possible loopholes in enforcing the provisions of the Act relating to preventing the ever increasing menace of illegal and ruthless exploitation of Government forests. Serious consequences ensue not only against those who are guilty of commission of forest offence but also against those who render aid in its commission. For variety of reasons theoretical as well as practical it is very difficult to detect the offence and thus prevention is better than cure. In this background, releasing of a confiscated vehicle on supratnama is quite a serious matter, since there is every possibility of its being put to the same use again. Hence, it is only in the rarest of rare cases that the vehicle should be handed over to the owner on supratnama pending appeal filed by the owner against the order of confiscation. Judging in that light, even the undisputed factual background noticed earlier does not justify the impugned order. The driver was incharge of the vehicle and he has not only admitted the commission of offence but has involved the owner in his very first statement recorded immediately after the interception of the vehicle by the police. In this connection useful reference may be made to S. 61B(2) of the Act. Thus, there was no prima facie case in favour of the respondent to justify the order.

10. The petition is therefore, allowed and the impugned order is quashed and set aside.

11. The vehicle is still with the Forest department in view of the stay granted by us. It is lying idle unnecessarily and under all these circumstances, we direct the disposal of the appeal within a period of one month from today. The parties are

directed to appear before the Appellate Court on 19th March, 1990.

12. Petition allowed.