

(1999) 02 BOM CK 0063

In the Bombay High Court

Case No : Criminal Writ Petition No. 228 of 1997

State of Maharashtra

APPELLANT

Vs

Mohammad Shabbir Sheikh Najmuddin and others

RESPONDENT

Date of Decision : 09-02-1999

Acts Referred:

Bombay Transit of Forest Produce (Vidarbha Region Saurashtra and Kutch Area) Rules, 1960 — Rule 25, 3
Forest Act, 1927 — Section 41, 42, 64

Citation : (2000) 5 BomCR 439 : (1999) CriLJ 4019

Hon'ble Judges : D.D. Sinha, J

Bench : Single Bench

Advocate : M.P. Badar Spl. C, for the Appellant;

Judgement

D.D. Sinha, J.—This matter was listed for final hearing before this Court on 11-1-99. Since, Shri Varma the learned Counsel for the respondent No. 1 was absent on that day, this Court has adjourned the matter by way of last chance in order to give opportunity to the respondents to appear in the matter on the next date. However, even today the Counsel for the respondent No. 1 is absent and hence the matter is proceeded on merits.

2. Heard Shri Badar, the learned Special Counsel for the petitioner.

3. The present writ petition is directed against the order dtd. 30-10-96 passed by the Judicial Magistrate, First Class, Mohadi below Exh. 1 and 3 in Criminal Case No. 57/96 whereby the present non-applicants 1 and 3 were discharged from the offence punishable under sections 41 and 42 of the Indian Forest Act and the property was returned to the complainant i.e. Forest Department. The petitioner - Forest Department filed the Revision against the order of discharge passed by the Judicial Magistrate, First Class, Mohadi before the Sessions Judge, Bhandara. Similarly, the respondent No. 1 also challenged the order passed by the Judicial Magistrate, First Class, Mohadi in respect of the return of property to the complainant i.e. the Forest Department by way of appeal before the Sessions

Judge, Bhandara. The Revision preferred by the petitioner as well as the appeal filed by the respondent No. 1 came to be heard by the Sessions Judge, Bhandara and by common judgment dtd. 26-2-97 the Sessions Judge, Bhandara dismissed the Revision Application No. 12/97 filed by the petitioner and allowed the Criminal Appeal No. 45/96 preferred by the respondent No. 1. Being aggrieved by the same the petitioner preferred the present writ petition on both the counts.

4. Respondent No. 1 - Mohammad Shabbir and respondent No. 3 - Gajanan Sonawane-driver of the truck were prosecuted for the offence punishable under sections 41 and 42 of the Indian Forest Act, 1927 on the allegations that they were found in possession of forest produce without valid transit pass. The Range Forest Officer of Jamkandri lodged the complaint in the Police Station, Mohadi against these two accused persons and after completion of the investigation, respondents 1 and 3 came to be charge sheeted in the Court of Judicial Magistrate, First Class, Mohadi on 29-1-96.

5. Respondents 1 and 3 on 28-8-96 submitted an application (Exh. 3) for their discharge on the ground that prima facie case has not been made out against them for the offence punishable under sections 41 and 42 read with section 64 of the Indian Forest Act. The petitioner - Forest Department objected for grant of discharge and opposed the application by filing reply. The Judicial Magistrate, First Class, Mohadi after hearing both the sides vide order dtd. 30-10-96 discharged both the accused i.e. respondents 1 and 3.

6. Shri Badar, the learned special Counsel for the petitioner contended that the respondent No. 1 is a forest contractor and on 21-6-95 he had purchased 51.50 fuel beats from Mangarli Depot of Jamkandri Range for Rs. 21,700/-. The girth of the said forest produce was less than 45 cm. On 3-7-95, respondent No. 1 alongwith respondent No. 3 came with truck No. MHG 6888 and took away 12 beats. It is contended that the respondents 1 and 3 -accused instead of loading legally purchased small size fuel wood in the truck, illegally loaded 29 Bija billets of size having girth 60 to 90 cms. The learned Counsel further contended that the accused in collusion with some forest officer illegally affixed hammer mark on these 29 bija billets.

7. On 7-7-95 the petitioner i.e. the Range Forest Officer registered the offence against respondent No. 1 and 3 under sections 41 and 42 of the Indian Forest Act, 1927 and filed the complaint before the Judicial Magistrate, First Class, Mohadi. The learned Counsel submitted that the transit pass was issued in favour of the respondent No. 1 in respect of 51.50 fuel beats only which were purchased by the respondent No. 1 from Mangarli Depot for Rs. 21,700/-. The said fuel wood was having girth less than 45 cm. It is further contended that the wood seized from the possession of respondent No. 1 i.e. 29 Bija Billets having girth 60 to 90 cm. is totally different and there was no transit pass issued by the Department in respect of the said forest produce. The learned Counsel, therefore, submitted that the respondents 1 and 3 have committed breach of Rule 3 which is punishable under Rule 25.

8. It is further contended that the Sessions Judge has not properly appreciated the provisions of section 41 and 42 of the Indian Forest Act and further wrongly held that section 42 cannot be held to be a punishing section. It is further submitted that section 41 deals with the powers of the State Government to make Rules to regulate the transit of forest produce and section 42 deals with penalty for breach of Rule made u/s 41 of the Indian Forest Act. It is further submitted that the State Government has framed Rules called as Bombay Transit of Forest Produce (Vidarbha Region & Kutch Area) Rules, 1960. Rule 25 of the said Rules provides punishment. The learned Counsel contended that reply filed by the petitioner before the Judicial Magistrate, First Class to the application for discharge, the petitioner has specifically mentioned both the Rules i.e. Rule 3 and Rule 25. The learned Counsel submitted that the order of discharge passed by both the courts below is not just and proper.

9. Shri Badar, the learned Counsel further contended that the order regarding the return of the property to the respondent No. 1 is passed by the Sessions Judge merely because the respondents 1 and 3 came to be discharged. The learned Counsel submitted that since the impugned order in respect of discharge passed by the courts below are not sustainable in law, the order passed by the Sessions Judge in respect of the return of the property is also, therefore, not sustainable in law.

10. I have considered the argument advanced by the learned Counsel for the petitioner and perused the impugned order passed. Perusal of the order dtd. 30-10-96 passed by the Judicial Magistrate, First Class would show that the learned Magistrate, First Class has given unnecessary importance to the hammer marks noticed on the property in question without considering the relevant provisions of the Act and Rules. The order, therefore, is cryptic in nature and suffers from proper reasoning. Similarly, the learned Sessions Judge wrongly came to the conclusion that sections 41 and 42 contemplates procedure and the job assigned to the State Government for preparation of Rules. The Sessions Judge failed to consider that the section 41 is an enabling section which gives powers to the State Government to make Rules and the State Government in pursuance of the said power has framed necessary Rules called as the Bombay Transit of Forest Produce (Vidarbha Region & Kutch Area) Rules, 1960. The Sessions Judge has also not taken into consideration the Rules 3 and 25 of the said Rules. Rule 3 provides regulation of transit of forest produce by means of passes and Rule 25 provides for penalty. The Sessions Judge also lost sight of the fact that section 42 deals with penalty for breach of Rule made u/s 41 of the Indian Forest Act. The learned Sessions Judge also has not taken into consideration the recitals of the reply filed by the petitioner to the application for discharge. The entire order of the learned Sessions Judge is totally silent in this regard and in my opinion, therefore, is misconceived and devoid of substance.

11. The order of learned Sessions Judge is also not sustainable in respect of the return of the property in favour of the respondent No. 1 because since the same

is primarily passed on the ground that the respondents 1 and 3 came to be discharged from the case and, therefore, they are entitled to get back the property which was seized from them at the time of seizure. Since I am inclined to hold that the order of discharge passed by both the courts are not just and proper, the order of return of property in favour of respondents 1 and 3 passed by the Sessions Judge, therefore, must also necessarily go for the aforesaid reason.

12. In the result, the impugned order passed by the Judicial Magistrate First Class, Mohadi on 30-10-96 to the extent of discharge of the respondents 1 and 3 is hereby quashed and set aside. Similarly, the order dated 26-2-97 passed by the Sessions Judge in Criminal Revision No. 12/97 is also quashed and set aside. The matter is remanded back to the Judicial Magistrate, First Class, Mohadi to frame appropriate charge and proceed with the trial. The writ petition is disposed of accordingly.

13. Petition allowed.