

(1998) 09 BOM CK 0113

In the Bombay High Court

Case No : Criminal W.P. No. 261 of 1997

State of Maharashtra

APPELLANT

Vs

Mohd. Safi Noor Mohd. Shaikh

RESPONDENT

Date of Decision : 25-09-1998

Acts Referred:

Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 457, 482
Forest Act, 1927 — Section 52, 52(1)
Penal Code, 1860 (IPC) — Section 34, 378, 379, 410, 411

Citation : (1998) 09 BOM CK 0113

Hon'ble Judges : A.B. Palkar, J

Bench : Single Bench

Advocate : M.P. Badar, Special, for the Appellant; P.V. Hardas, for the Respondent

Final Decision : Allowed

Judgement

A.B. Palkar, J.—This is a petition under Article 227 of the Constitution of India or in the alternative, u/s 482 of the Criminal Procedure Code. The following statement of facts is necessary to know the controversy.

2. On 7-8-1997, petitioner received some secret information about illicit cutting of teak trees and stealing teak timber and stolen teak timber being in a Saw Mill named as Guru Nanak Timber Mart. It was found that illicit cutting of stolen timber was going in that Saw Mill and lot of illegally felled timber was found there, 450 teak logs admeasuring 15.230 Cubic Meters were seized and 6 logs of 0.320 cubic meters of Adjat Wood and mixed 326 logs of 0.880 Cubic meters with some other material was found there.

3. Two hammer instruments having bogus hammer marks (782/IV) and (784)/IV were also seized from the said Saw Mill. Some cut-end wood pieces having hammer mark as (W.D)/B-1 were also found. This mark was of Wardha Division. The said Division had also given a report of theft to the Police Station and F.I.R.

was registered at Police Station Girad against unknown persons.

4. Further investigation confirmed that the teak timber logs found at Guru Nanak Saw Mill were a stolen property. It appeared to be stolen from Shivanfal Depot of Wardha Division of Forest Division.

5. The modus operandi was to cause disappearance of genuine hammer marks affixed on the timber logs and in its place to affix bogus hammer marks. Out of 31 teak timber logs, 28 were cut and their genuine hammer marks were removed. These cut-ends were found on the spot and on 28 teak timber logs, bogus hammer marks as 782 and 783 were found to have been affixed. These hammer instruments for giving particular marks could only be in the custody of Forest authorities in respective depots and could not be in the custody of any private Saw Mill. The genuine hammer marks of numbers 782 and 784 are at Umrer range of the Forest Division.

6. The Respondent is having permission for felling trees from private lands. While issuing transit pass for the same, hammer marks bearing No. 782 and 784 have been affixed on these logs and transit pass was issued by the Umrer Range. The Respondent used to dispose of these genuine logs brought from Umrer with the hammer marks No. 782 and 784 and thereafter used to commit theft of timber logs from Wardha Division i.e. Shivanfal Depot in conspiracy with one Samsherkhan s/o Karim Khan who is the principal accused and his son-in-law Sk. Ismail Sk. Ilai. The said son-in-law is running Guru Nanak Saw Mill on lease. The stolen material used to be brought to this Guru Nanak Saw Mill and there, the bogus hammer marks were used to be affixed by cutting the original hammer marks portion. The gang of Samsherkhan is operating in the field of illicit cutting of trees and investigation revealed that such material was transported by Samsherkhan from Wardha Division to Nagpur in conspiracy with Mohd. Safi Noor Mohd. and Mohd. Rafi s/o Noor Mohd. During investigation, some timber logs without hammer marks were also found indicating that it is a stolen property as any of the accused had no permission to cut timber trees. Investigation is in progress.

7. A report was sent to the Judicial Magistrate, First Class, Nagpur in respect of seizure of teak timber, Adjat timber and Saw Mill as well as hammer. A copy of the report was given to Conservator of Forests who is an authorised Officer u/s 61A with a specific request to take action u/s 61-A of the Indian Forest Act, 1927.

8. On 23-9-1997, Respondent Mohd. Safi filed an application in the Court of Judicial Magistrate, First Class, Nagpur u/s 457 of Criminal Procedure Code claiming return of the seized wood belonging to him on Supratnama, suppressing all relevant material and twisting the facts. A detailed reply was submitted by the petitioner and it was stated that the material has been seized u/s 52 of the Indian Forest Act and offence under sections 26(1)(d), (f), (g), 63(a), (b), 41 read with section 42 of the said Act as well as 378, 379 read with 34 and 410, 411, 485 and 487 of Indian Penal Code have been registered. The case papers

were also submitted to the Forest Officer, as indicated above and the matter is pending with him. However, the learned Magistrate passed an order on 24-10-1997 releasing the property on Supratnama and this order is challenged in this petition as it is entirely wrong and without jurisdiction. The learned Magistrate has wrongly assumed jurisdiction by holding that the Forest Officer reported the matter to him and conveniently failed to appreciate some part of the reporting having been made to Forest Officer u/s 61-A of the said Act.

9. On service of notice, Respondent appeared and was represented by Shri P. V. Hardas, Advocate. No reply is filed and with consent of the learned Counsel for the Respondent, matter was taken up for final hearing.

10. As the facts are not in dispute, what is material is to consider the legal provisions. Section 52 authorises the Forest Officer or Police Officer to seize the property when there is reason to believe that a forest offence has been committed in respect of any forest produce. The further sub-section relates to seizure of vehicles. Sub-section (2) requires the Forest Officer to put marks for identification on the seized product and requires him to report to the Magistrate having jurisdiction to try the offence. Proviso to Sub-section (2) of section 52 provides that, when the forest produce with respect to which such offence is believed to have been committed is the property of the Government and the offender is unknown, it is sufficient for the Officer to make report to his officer superior. As per second proviso, when the offence on account of which the seizure has been made is in respect of timber, sandalwood, firewood, charcoal or such other forest produce notified by the Government from time to time and which is the property of the State Government, the Forest Officer shall report of such seizure also to the concerned authorised Officer u/s 61 A. Section 61A is as below :

(1) Notwithstanding anything contained in the foregoing provisions of this Chapter or any other law, where a forest offence is believed to have been committed in respect of timber, sandalwood, fire-wood, charcoal or any other notified forest produce which is the property of the State Government, the officer seizing the property under subsection (1) of section 52 shall without any unreasonable delay produce it, together with all tools, boats, vehicles and cattle used in committing such offences, before an officer authorised by the State Government in this behalf by notification in the Official Gazette, not being an Officer below the rank of an Assistant Conservator of Forests.

According to this sub-section, the Forest Officer is required to produce the property before the authorised Officer where the forest offence is believed to have been committed in respect of timber, sandalwood, fire wood, charcoal or any other forest produce. As per sub-section (3) when the property seized u/s 52(1) is timber, sandal wood, fire wood, etc. which is the property of the State Government or any such property which is produced before an authorised Officer and he is satisfied that a forest offence is committed in respect of such property, the said Officer may irrespective of the fact that whether prosecution is instituted

or not for the commission of such offence, order confiscation of the property so seized with all tools, vehicles, etc.

11. Section 61-D provides for an appeal to the Sessions Judge having jurisdiction over the area, by a person aggrieved by any order passed u/s 61A or 61C. Section 61C is in respect of revisional powers of Conservator of Forests and the order passed in such revisional jurisdiction is appealable to the Sessions Court u/s 61-D. The important material provision of the Act is section 61-G, which is as follows :

61G. 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 with 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 61A or the Officer specially empowered u/s 61C or the Sessions Judge hearing an appeal u/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.

A perusal of the said section clearly shows that when the property is seized u/s 61, the authorised officer empowered u/s 61A or the authority u/s 61C or the Sessions Judge hearing appeal u/s 61D shall have and notwithstanding anything to the contrary in the Code of Criminal Procedure or any other law for time being in force, any other officer. Court, tribunal or authority shall not have jurisdiction to make orders with regard to custody possession, delivery, disposal, etc. in respect of such property.

12. In view of the above undisputed facts, it is clear that seizure u/s 52(1) was reported to the Forest Officer. The property was obviously much less, prima facie a forest produce and offence was committed not only by stealing the forest property, but by cutting the original hammer marks and placing on it bogus marks, which marks can be only in the custody of forest officers and not with any private Saw Mills. It also appears that that activity has been going on for a considerable period of time and particular modus operandi is being employed by the accused thereby causing huge loss to the Government in respect of forest products, which is even otherwise a valuable property i.e. teak timber. Apart from other aspects, this illicit felling of timber and Adjat trees in the forest is also responsible for serious disturbance in the ecological balance and such act has to be nipped in the bud and with this intention in mind, the Legislature has made aforesaid provisions. The learned Magistrate failed to consider the effect of the legal provisions and did not take notice of the fact that the seizure had been reported to the authorised officer and the further provisions looking to the order passed by the authorised officer. Section 61G in categorical terms barred the jurisdiction of any other Court, which provision begins with a non obstante clause

i.e. without considering the provisions made in the Code of Criminal Procedure or any other law time being in force.

13. In this view of the matter, I am satisfied that the order of the learned Magistrate directing return of the property on supratnama is without jurisdiction, which requires to be set aside.

14. Petition is allowed. The order passed by the learned judicial Magistrate, First Class, Nagpur in Misc. Criminal Application No. 80/97 on 24-10-1997 directing the return of property on supratnama to the applicant-Mohd. Shafi s/o Noor Mohd Shaikh (Respondent herein) is hereby set aside. Rule is made absolute in the aforesaid terms.