

(1988) 10 BOM CK 0027

In the Bombay High Court

Case No : Criminal Revision Application No's. 286 and 1768 of 1988

State of Maharashtra

APPELLANT

Vs

Rajendra Hilal Patil and Another

RESPONDENT

Date of Decision : 07-10-1988

Acts Referred:

Forest Act, 1927 — Section 26, 55

Citation : (1989) 1 BomCR 287

Hon'ble Judges : A.D. Tated, J

Bench : Single Bench

Advocate : P.M. Vyas, P.P., R.S. Bhosale and Kiran V. Gupta, for the Appellant;
Rajiv J. Mane, for the Respondent

Judgement

A.D. Tated, J.—The State has preferred Criminal Revision Application No. 286 of 1988 passed by the Judicial Magistrate, F.C., Shahada, ordering the return of the truck No. MWD 5480 to its owner Jagannath Shankar Badgujar. The owner filed Criminal Application No. 1769 of 1988 for vacating the order of stay passed by this Court in Criminal Revision Application No. 286/88 staying the order dated 23rd June, 1988 passed by the learned Judicial Magistrate, F.C., Shahada, in S.T.C.C No. 559 of 1988 and for confirming the order of the return of the truck to him passed by the learned Judicial Magistrate, F.C., Shahada.

2. The truck in question was seized by the Forest Officer while it was being wed for carrying away gravel stone-forest produce from the forest without any licence or permission. The truck was being driven by the driver Rajendra Hilal Patil who was prosecuted for the offence punishable u/s 26(g) of the Indian Forest Act and he was sentenced to pay a fine of Rs. 75/-. No order of imprisonment was passed by the learned Magistrate while disposing of the criminal case of the admission of the guilty by the accused Rajendra Hilal Patil. Later on the owner of the truck appeared before the learned Judicial Magistrate, F.C., Shahada and after hearing the owner of the truck and the complainant, the Forest Officer, the learned Judicial Magistrate on 23rd June, 1988 passed the impugned order

directing the truck to be delivered to the owner Jagannath Shankar Badgujar after the appeal period was over.

3. Feeling aggrieved by the order of learned Judicial Magistrate directing the truck to be delivered to the owner Jagannath Shankar Badgujar, the State has preferred Criminal Revision Application No. 286 of 1988 and the owner of the truck filed Criminal Application No 1769 of 1988 for vacating the stay order passed by this Court and for delivery of the truck to him. The State has also sought for enhancement of the sentence passed by the learned Judicial Magistrate against the accused for the offence u/s 26(g) of the Indian Forest Act. (7th October, 1988)

4. It is not disputed that the truck is not owned by the accused Rajendra Hilal Patil who has been convicted of the offence u/s 26(g) of the Indian Forest Act. The truck is owned by Jagannath Shankar Badgujar and the accused Rajendra Hilal Patil was engaged by him as a driver. The owner Jagannath Shankar Badgujar filed an affidavit before the learned Judicial Magistrate wherein he stated that he was the owner of the truck and that he had given the truck to his driver to transport some goods to Shahada and he used the said truck for commission of the offence without his knowledge. Before the learned Judicial Magistrate the complainant pursuant to a notice from the learned Magistrate for his say on the application by the owner for return of the property, stated that he had no objection for return of the truck to the owner vide his say Exh. 14. Subsequently the Range Forest Officer Shahada submitted a report on 20th June, 1988 contending that the complainant gave his say Exh. 14 under the pressure of the accused and he submitted that the truck involved in the case be forfeited to the State. The learned Judicial Magistrate did not accept the contention of the Range Forest Officer that the complainant gave his say Exh. 14 under the pressure of the accused and he passed the impugned order dated 23rd June, 1988 directing the truck to be returned to Jagannath Shankar Badgujar. The learned Judicial Magistrate accepted the contention of the owner of the truck that the accused used the truck for the commission of the offence without his knowledge. The learned Judicial Magistrate having accepted the statement of Jagannath Shankar Badgujar that the truck was used by the accused for the commission of the offence without his knowledge, this Court in revision cannot take a different view and rejecting the say of the owner of the truck that the accused committed the offence without his knowledge. If the accused has used the truck for the commission of the offence without the knowledge of his master, the master cannot be penalised by forfeiting the truck.

5. It may be mentioned that section 65 of the Indian Forest Act, before amendment by Maharashtra Act 7/85 read thus :-

"55. Forest produce, tools, etc. when liable to confiscation.---(1) All timber of forest produce which is not the property of Government and in respect of which a forest offence has been committed, and all tools, boats vehicles and cattle used in committing any forest offence, shall be liable to confiscation.

(2) Such confiscation may be in addition to any other punishment prescribed for such offence."

After amendment by Maharashtra Act 7/85 section 55 reads thus :-

"55. Forest produce, tools, etc. when liable to forfeiture.---(1) All timber of forest produce which is not the property of Government and in respect of which a forest offence has been committed, and all tools, boats vehicles and cattle used in committing any forest offence shall subject to section 610, be liable by order of the convicting Court to forfeiture.

(2) Such forfeiture may be in addition to any other punishment prescribed for such offence."

Reading of the section before amendment and after amendment shows that the word "confiscation" has been substituted by the word "forfeiture". As per Webster's Dictionary the word forfeiture means "a fine for breach of contract or negligence; to be deprived of, penalty for a crime, fault, error etc. or as a necessary result or consequence. The word "confiscate" means to seize for the public treasury as a penalty to take away something from somebody under discipline."

6. In Emperor v. Mohamad Khan and others AIR 1938 Nag 365 His Lordship Grille, J., while considering the provisions of section 55 of the Forest Act considered the effect of using the word "confiscation" and not the word "forfeiture" in section 55. In that case it was argued that the cattle seized for causing damage to the forest property could not be confiscate as the property did not belong to the graziers who allowed the cattle to enter into the forest and cause damage to the forest property. While repelling this argument Grile, J., observed thus---

"It has been argued that a confiscation can only be in respect of the property of the person convicted of the offence, since sub-section (2) of section 55 reads : "Such confiscation may be in addition to any other punishment prescribed for such offence, and therefore that the confiscation is itself a punishment. If this argument were correct, there would be no reason for the existence of section 59 or at least of the provision contained therein that any person claiming to be interested in the property so seized may make an appeal against the order of confiscation. Case not infrequently arise of persons making an appeal under this section in respect of the confiscation of the bullocks which they have lent to others in all innocence and these bullocks being used in the commission of a forest offence. I have already stated that I believe it to be the intention of the Legislature that master should not in every case be able to evade punishment in some form, although their criminal liability for forest offences is excluded. The word used is "confiscation" and not as in the Penal Code, "forfeiture". Forfeiture can only relate to the property owned by the person concerned, but property may be confiscated from the possession of anyone, whether he is the owner thereof or no. The owner of property confiscated, be he an offender under the

Forest Act or no, has a right to appeal against the order of confiscation, and it is in the discretion of the Court to which the appeal is made whether the order of confiscation shall or shall not be set aside."

Deletion of the word "confiscation" and substitution of the word "forfeiture" in section 55 of the Indian Forest Act is not without any purpose. I have set out above the meaning of the words "forfeiture" and "confiscate" appearing in the Webster's English Dictionary and also extracted the passage from the decision of the erstwhile Nagpur High Court in the case of Emperor v. Mohamad Khan, which clearly makes out a difference in the connotation of the words "confiscation" and "forfeiture" Forfeiture is always by way of penalty and that can be levied only against the accused who has been found guilty of the offence. "Confiscation" on the other hand is a term of wider connotation and the vehicle used for the offence could be confiscated from anyone under discipline. That is not the case with the "forfeiture". Vehicle or any other property used for committing the forest offence can be forfeited by way of penalty in addition to the punishment prescribed for the offence. In view of the aforesaid substitution of the word "forfeiture" in place of "confiscation" in section 55 of the Indian Forest Act, the truck not being owned by the accused could not be forfeiture. The reason is obvious that forfeiture of the truck which is not owned by the accused is no penalty to the accused and it would be the penalty to the real owner who had no hand in the commission of the offence and who is not charged for the accused. In this view of the matter, the order passed by the learned Judicial Magistrate on 23rd June, 1988 ordering the return of the property to the owner Jagannath Shankar Badgujar appears to be legal and proper and calls for no interference from this Court.

7. The State has further sought for enhancement of the sentence awarded by the learned Judicial Magistrate to the accused Rajendra Hilal Patil for the offence punishable u/s 26(g) of the Indian Forest Act. The learned Judicial Magistrate explained particulars of the offence to the accused and the accused pleaded guilty to the offence. The accused did not in any way challenged the plea of guilty and the conviction is based on his plea of guilty for the offence u/s 26(g) of the Indian Forest Act. The learned Counsel Mr. R.J. Mane submits that the accused Rajendra Hilal Patil is a poor driver and taking into consideration his financial condition the sentence of fine of Rs. 75/- awarded by the learned Judicial Magistrate, in the circumstances of the present case is just and proper and does not call for any enhancement by this Court. The offence u/s 26(g) is punishable with imprisonment which may extend to one year or with fine which may extend to Rs. 2000/- or with both, in addition to such compensation for damage done to the forest, as the convicting Court may direct to be paid. In the present case it was alleged that the accused caused damage worth Rs. 50,000/- and that was put to the accused while explaining the particular of the offence and the accused in clear terms pleaded guilty and stated that he was transporting stones loaded in the truck No. MWD 5480. It is in the interest of the community to preserve forest and with a view to check those forest offences

which are on the increase the Legislature thought it fit in 1985 to enhance the sentence for the offence u/s 26 of the Indian Forest Act from imprisonment for six months and a fine of rupees five hundred to imprisonment for one year and a fine of rupees two thousand. It is also further provided that in addition to the aforesaid punishment the accused may also be order to pay compensation for the damage caused to the forest. The Courts are expected to award adequate sentence when offences are proved beyond reasonable doubt. Criminal laws are meant for the safeguard and preservation of the society and those persons who commit offences are liable to be punished adequately. If the Courts do not punish the offenders adequately, the purpose of legislation is likely to be defeated. The forest offences are difficult to be detected. Forest extend on a very large tract of land and it is easy for the person who are inclined to commit forest offences to get into the forest and commit offences without being detected by the forest guards. The accused who are found guilty of such forest offences must be adequately punished. Punishment should be sufficiently heavy so as to act as a deterrent to the person found carrying gravel from the reserve forest by truck and thereby commits offence u/s 26(g) of the Indian Forest Act. The offence u/s 26(g) should not be so lightly treated in the matter of sentence. The learned Magistrate imposed a sentence of fine of Rs. 75/- only. The sentence imposed by the learned Magistrate is ridiculously low taking into consideration the gravity of the offence committed by the accused. The learned Counsel for the accused contends that the accused was mere carrier and, therefore, no heavy sentence is called for. I am unable to agree with him. The person who is found removing forest produce and committing the offence u/s 26(g) whether he is carrying the forest goods for himself or for somebody else deserves to be adequately punished and the punishment should be such that it will Act as deterrent for the person inclined to commit such offences. Consequently the State revision against the sentence has to be allowed. Taking into consideration the seriousness of the offence, the sentence is enhanced to R.I. for 3 months and fine of Rs. 500/- or in default R.I. for one month.

In the result, the revision is partly allowed. The revision is against the order returning the truck to Jagannath Shankar Badgujar is dismissed. The revision regarding enhancement of the sentence is allowed and the sentence is enhanced to R.I. for 3 months and fine of Rs. 500/- or in default R.I. for one month.

Criminal Application No. 1769 of 1988, in view of the above orders in Criminal Revision Application No. 286 of 1988 does survive. Truck No. MWD 5480 shall be returned to the owner Jagannath Sahankar Badgujar forthwith.