
(1998) 09 BOM CK 0117
In the Bombay High Court
Case No : Criminal W.P. No. 587 of 1998

State of Maharashtra

APPELLANT

Vs

Smt Kalavati Hanumant Modak

RESPONDENT

Date of Decision : 08-09-1998

Acts Referred:

Forest Act, 1927 — Section 41, 61A(ii)

Citation : (1998) 09 BOM CK 0117

Hon'ble Judges : V.R. Tipnis, J

Bench : Single Bench

Advocate : M.P. Galeria, app, for the Appellant; D.R. More, for the Respondent

Final Decision : Allowed

Judgement

V.R. Tipnis, J.—On receipt of the report from the Range Forest Officer, Paud dated 11-12-1990 and from the Range Forest Officer, Bhamburda dated 17-12-1990 regarding commission of forest offence a detailed enquiry was held by the Authorised Officer and the Asst. Conservator of Forest, Pune u/s 61(A) and (B) of the Indian Forest Act. The Round Officer, Paud and Round Officer, Kopara, Forest Guard Mutha and Forest Guard, Bahuli while on night patrolling duly during the night between 30-11-1990 to 1-12-1990 on Mutha Pune Road, intercepted a truck at about 5 a.m. on 1-2-1990. After enquiry with the four persons in the truck including the driver and after verification by the forest staff on the spot, it was found that 39 logs of teak without bearing hammer marks as required by law, were stacked in the truck. No transit pass was found in respect of the said teak pieces. Panchanama was drawn on the spot. As such it was clear that the transport of teak timber was being done without valid and proper transit pass in the vehicle being truck No. MHQ 2672. The said 39 teak timber pieces and the truck were seized- The Range Forest Officer, Bhamburda was asked to inquire about the origin of the material and it was found that the said teak timber was fell in and brought from the Government Forest of village Khudaje Taluka Haveli in charge of National Defence Academy, Khadakwasla. The Range Forest Officer,

Bhamburda after due enquiry drew panchanama and described the spot from where the said teak timber was illicitly fell and subsequently illicitly transported. The matter was reported to the Authorised Officer and Asst. Conservator of Forest, Pune and 39 logs of timber and the seized truck were produced as required u/s 61A(ii) of the Indian Forest Act.

2. During the enquiry it was revealed that the truck in question belonged to Smt. Kalavati H. Modak, the registration certificate and tax certificate book along with the Xerox copies of fitness certificate of Insurance Co. and the tax receipt were produced before the enquiry officer by the owner on 14-12-1990. A show cause notice as required u/s 61(B)(1) of the said Act was served on the owner as well as the driver and the offenders. Written statements were filed in reply to the said show cause notice by the four culprits as well as the driver and the owner. They were represented through the lawyer. Further opportunity to adduce any evidence or examine witnesses was given and after considering the same, the authorised officer held that the material clearly shows that the forest offence has been committed and the truck No. MHQ 2672 was transferring the teak timber without the hammer mark and without valid transit pass as required by law. He further held that it is proved that 39 teak pieces were from the Government Forest area of village Khudaje in charge National Defence Academy, Khadakwasla. He therefore held that the seized timber which was loaded in the truck MHQ 2672 was being transported without valid transit pass and the timber was belonging to the Government.

3. The first offence report, panchanama and the written statement of the concerned offenders before the forest officer, proved that the truck MHQ 2672 was illicitly transporting illicitly cut timber and therefore the truck was used in committing the said forest offence. The officer further observed that the trees were fell from the Government forest, the driver of the truck Shri Dhumal had taken the truck from Pune to Khudaje Government Forest for carrying the timber. He was present at the site when the loading of illicit material was done. His defence that he was slept when the truck was being loaded, was found to be lame excuse to cover his connivance in the forest offence. The officer further held that he being an agent of the owner and the person in charge of the said vehicle, has failed to take all reasonable and necessary precautions against the illegal user of the vehicle in his charge in spite of his undertaking given to the owner that the truck in his charge would not be used for transporting any illegal and unauthorised goods. The officer further observed that after going through the written statements of Smt. Kalavati Hanumant Modak, the owner of the truck, and the written statement of the driver as also other offenders, the officer has come to the conclusion that the forest offence was committed by illicitly transporting the illicitly cut teak timber from Government forest of Khudaje in charge of National Defence Academy, Khadakwasla and offenders Shri C. D. Deokar, S. D. Paigude, M. R. Paigude along with the driver S. D. Dhumal committed the said offence u/s 41 of the Indian Forest Act. He held that the driver incharge of the said vehicle and acting as agent of the owner has failed to

take all reasonable precautions against the use of the truck for illegal transport of illicitly cut teak timber. Ultimately by his order dated 5-1-1991 the said authorised officer passed order that the seized forest produce viz. 39 teak pieces be confiscated and they be sold in public auction. The seized vehicle i.e. truck bearing No. MHQ 2672 be also confiscated and was directed to be sold by public auction.

4. Being aggrieved by the said order of confiscation and sale of the seized truck Smt. Modak owner of the truck filed criminal appeal No. 5 of 1991 in the Court of Additional Sessions Judge, Pune. After elaborately discussing the facts and also various submissions the learned Judge categorically held that it is very clear that the truck was indulged in offence under the Forest Act. He also held that the authorised officer had duly made inquiry and the procedure for confiscation is sufficiently followed and complete, that there is no other lacuna in the confiscation proceedings. After dealing with the provisions of the Forest Act the learned Judge held that the entire procedure of giving notice, etc. is clearly followed.

5. Thereafter the learned Judge addressed himself to the question as to whether the appellant could satisfy the authorised officer in respect of her objections and whether she could satisfy the authority that she had no knowledge or she had not connived with the driver for carrying out the forest produce in the said truck and whether she had taken sufficient care and precaution for avoiding such illegal use of the vehicle. Then the learned Judge referred to the agreement between the owner and the driver of the truck whereunder the driver was appointed on a monthly payment of Rs. 900/- and the driver had undertaken that the truck will not be used for the purpose of carrying prohibited or contraband articles or goods; that the truck will not be used for the purpose of transporting any illegal and unauthorised goods and he will not carry any passengers. The learned Judge further held that admittedly the owner of the truck was not present when the truck was seized. The learned Judge was tremendously impressed by the agreement and felt that what more precaution could have been taken by the owner. The learned Judge held that the authorised officer has not discussed anything against the appellant or has not mentioned anything about the undertaking given by the driver to the owner. The learned Judge observed that no doubt the driver and agent of the owner has not taken necessary care and precaution and thus for the sake of argument, if it is presumed that the driver of the said truck has purposely and knowingly indulged in the said offence, even then the question arises that whether for the wrong committed by the driver, the owner of the said vehicle i.e. the appellant should be punished by depriving her from her own vehicle. The learned Judge again and again repeated that the authorised officer has not discussed anything in the judgment in respect of the liability of the owner and the learned Judge was at loss to know what further precaution than taking the undertaking from the driver could have been taken by the owner and he held that the owner of the truck has given sufficient explanation as to how she was not aware of the incident and that

she had warned the driver while engaging him not to use the said truck, for such illegal activities. The learned Judge thereafter referred to several authorities cited at the bar by both sides. One of the authorities he distinguished by saying that one does not know whether in the facts of the case the owner of the truck has produced any undertaking between the driver and the owner. The learned Judge again observed that the owner in this case has produced the undertaking given by the driver that he will not use the vehicle for carrying any prohibited or contraband goods or for the purpose of transporting any illegal and unauthorised goods and the learned Judge did not understand except that what more the owner can do. In other words the learned Judge felt that once a written undertaking is given by the driver that ipso facto shows that the owner had taken all possible care and precaution which would absolve the owner from the liability of confiscation of the truck. The learned Judge in a very lengthy order had discussed several other cases and ultimately by judgment and order dated 21-3-1991 he was pleased to allow the appeal and set aside the order of confiscation of the truck passed by the authorised officer. The learned Judge however, directed that the truck be delivered in possession of the appellant on execution of bond of Rs. 1 lack on condition that she shall not take any disposal and alterations, change etc. in the same, until final decision of the forest case lodged against the other accused. Similarly she shall not create any loan until the decision of the forest case and shall produce the same before the Magistrate where the case will be enquired into.

6. Being aggrieved by the aforesaid order of the learned Additional Sessions Judge, the State of Maharashtra has preferred the aforesaid writ petition.

7. I have heard Shri Galeria the learned APP for the State and Shri Deepak More for the respondent owner of the truck. With the assistance of the learned counsel I have gone through the entire record. The learned Addl. P.P. produced the relevant record which was before the authorised officer. Shri Galeria submitted that on the basis of the record the order of confiscation was more than justified. Shri More on the other hand submitted that the learned Judge was absolutely right in setting aside the order of confiscation as the owner who was a widow had sufficiently discharged her burden showing that she had taken due care and precaution and as such the truck was not liable to be confiscated. Shri More, therefore, urged that the order of learned Additional Sessions Judge should be confirmed.

8. As already stated the learned Judge has held that the authorised officer has followed the proper procedure as required by law during the enquiry. The learned Judge has also held that the truck in question was involved in forest offence and was used as a carrier for illicitly cut timber logs from Government forest. The learned Judge also held that four persons including the driver were the offenders. The learned Judge however, felt that the authorised officer has not properly dealt with and considered the defence of the owner. However, after having gone through the entire record and the order of the authorised officer and the order

passed by the learned Addl. Sessions Judge I am of the clear opinion that the learned Judge has allowed his mind to be swayed overly by the so called undertaking given by the driver. The learned Judge in my opinion is not right when he observes that except taking such undertaking what more precaution the owner could have taken. It is extremely relevant to notice that the truck was caught at early hours of 1.30 a.m. That the undertaking and affidavit which has impressed the learned Judge, is merely an undertaking on a Rs. 10 stamp paper between the owner of the truck and the driver Dhumal. After mentioning the date of purchase of the truck and the expenses made thereunder, it further states that the driver was introduced to the owner and the driver is having valid licence for heavy vehicle and is a trained driver and therefore he is put in employment as driver by the owner on a monthly payment of Rs. 900. Thereafter the driver has recorded his undertaking that the truck shall be used for transporting goods only within the jurisdiction of Maharashtra State; that the truck is not to be used for the purpose of carrying any prohibited and contraband articles or goods and several similar undertakings.

9. It is extremely relevant to notice that in the statement immediately recorded of the driver he clearly admits the offence but what is more conspicuous is that neither the driver nor the owner has stated that who was conducting the business of transporting, who had entered into the contract of transport and how on the date of which the truck was caught, the truck was engaged in a particular transaction. It was stated that he was in the employment of Smt. Modak as a driver; that Smt. Modak is a registered owner of the truck; that he has executed an undertaking and that as usual on 30-11-1990 at about 9.30 a.m. he took the truck from the premises of Smt. Modak for the purpose of transport business, and halted near Ladkat Petrol Pump, Bhawani Peth. After doing that day's business he had a trip to Hadpsar and carried certain material to Vadgon Dhyari. and returned to Ladkat Petrol Pump and was waiting for customer. At about 7.30 p.m. on 30-11-1990 one Mr. Chintaman Dagadu Dcokar had been to him and asked as to whether the truck is available for the purpose of carrying grass bundles from village Kudaje when he replied in the affirmative. Thereafter, Deokar agreed to pay Rs. 700/- for the said transport. Accordingly Deokar boarded the truck and the truck was being taken to village Kudaje at about 8.30 p.m. The driver got exhausted due to day's work and went to sleep in the said truck after reaching Kudaje and without his knowledge the truck was loaded and he was directed by Deokar to proceed to village Ghotwade and while he was so proceeding the truck was intercepted at 1.30 a.m. on 1-2-1990. The story of the driver is to be mentioned only for rejection. The say of the owner is again regarding the number of the truck and the undertaking given by the driver. It is further mentioned by Smt. Modak, owner that she is widow and income from the truck is the only income and she has employed Dhumal as driver on a monthly salary of Rs. 900/- and Dhumal was expressly directed not to use the said truck for the purpose of carrying or transporting any prohibited or contraband goods or articles from the said truck. Dhumal has executed the undertaking. Dhumal

carried the said truck from her premises as usual on 30-11-1990 for the purpose of business. She learnt that the driver did not return on that day and she also learnt that the truck was seized. She claimed that she is innocent; that she has absolutely no knowledge that the truck is being used by Dhumal for the purpose of transport of contraband or prohibited goods.

10. Section 61(B)(2) of the Indian Forest Act provides that without prejudice to the provisions of sub-section (1) no order confiscating any tool, boat, vehicle or cattle shall be made u/s 61A if the owner of the tool, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying the timber, sandalwood, fire wood, charcoal, or any other notified forest produce, without the knowledge or connivance of the owner himself, his agent, if any, and the person incharge of the tool, boat, vehicle or cattle and that each of them had taken all reasonable precaution against such use.

11. In my opinion the owner of the vehicle in the facts and circumstances of the case by merely producing the so-called undertaking has not discharged her burden at all. On the contrary no details are given as to who used to enter into the transaction. If Dhumal was merely a driver on a salary of Rs. 900/-; what used to happen to the money; how she used to control him, etc. One can understand if it was the case of the owner that the truck was given for conducting business of transport. Such is not the case. As such the owner must be held to be liable otherwise every owner of the truck will merely take written undertaking from the driver and will claim that he had taken enough precaution and under no circumstances once such an undertaking is given, the truck though involved in serious forest offence, can ever be confiscated. Not only; in the facts and circumstances of the case; the owner has miserably failed to discharge her burden under sub-clause (2) of section 61B of the said Act, but also on a proper reading of the same, I am of the opinion that not only the owner must show that she had taken necessary and reasonable precaution against the illegal use of the vehicle but even it must be shown that the agent of the owner who was in charge of the truck had also taken all reasonable and necessary precaution. In the facts and circumstances before me the material on record clinchingly shows that the driver Dhumal has clearly connived at the illicit transport and not only he has not taken any care but the illicit transport was fully with his knowledge.

12. Under the aforesaid circumstances the authorised officer was more than justified in confiscating the truck and the learned Addl. Sessions Judge was wrong in allowing the appeal and setting aside the said order.

13. In the result, the writ petition succeeds. The order passed by the learned Additional Sessions Judge, Pune on 21-3-1991 in criminal appeal No. 5 of 1991 is hereby set aside and the order passed by the authorised officer on 5-1-1991 in A.O. Case No. 2 of 1991 is confirmed. The respondent No. 1 shall be liable to produce the truck before the authorised officer or upon failure shall be liable as per the bond executed by her as per the order of the learned Additional Sessions Judge, Pune.

Rule made absolute accordingly.

At this stage Shri More applies for stay of this order for a reasonable period and accordingly this order is stayed for a period of four weeks from today.

Certified copy expedited.